

REPORT TO THE PLANNING COMMISSION

CITY COUNCIL CHAMBERS, 3300 CAPITOL AVENUE, FREMONT CA 94538

General Order of Business

- 1. Preliminary (Call to Order 7:00 p.m., Salute to the Flag, Roll Call, Approval of Minutes)
- 2. Consent Calendar
- 3. Oral Communications
- 4. Public Hearing Items
- 5. Matters of Interest
- 6. Adjournment



Addressing the Planning Commission

Any member of the public may speak on any item under discussion by the Planning Commission after "being recognized" by the Chairperson. To speak, walk to the rostrum directly in front of the Commission and, after the Chairperson recognizes you, state your name and address. Generally, after the Chairperson introduces an item, the order of presentation begins with comments by staff. The project applicant or their authorized representative may then comment. Next, interested members of the public may speak. Additional comments by the applicant or staff, as appropriate, may follow. At the close of testimony, the matter will return to the Planning Commission for discussion and action. Any item not introduced prior to 11:00 p.m. will automatically be "continued," or held over, to the next regularly scheduled Planning Commission meeting.

Consent Calendar

Items on the Consent Calendar are scheduled public hearing items which are considered routine by the Planning Commission. The Consent items will be enacted by one motion and one vote and include the following:

- Items recommended for continuance to a later meeting.
- Items for which staff has received no indication of public concern and for which staff is recommending approval.
- Items which have been moved from the regular hearing agenda and placed on the Consent Calendar at the beginning of any particular meeting.

Items on the Consent Calendar may be removed by any member of the public or Planning Commission. If removed from the Consent Calendar, the item will be placed on the regular hearing agenda in its normal sequence on the agenda. When the Planning Commission approves a consent item, it approves the staff recommendation together with any conditions of approval included in the recommendation.

Please note that items on the regular hearing agenda may be placed on the Consent Calendar at the beginning of any particular meeting when requested by a member of the Planning Commission and with the approval of the Chairperson. If a Planning Commissioner requests that an item be moved from the regular hearing agenda and placed on the Consent Calendar, the Chairperson will ask if anyone in the audience or any other Commissioner wishes to speak to the item or have the item heard. If no one wishes to do so, the Chairperson may move the item to the Consent Calendar and it will be considered at that time. Accordingly, anyone wishing to speak to an item should be present at the beginning of the meeting.

Oral Communications

Any member of the public desiring to speak on a matter which is not scheduled on this agenda may do so under Oral Communications. As a matter of policy, the Planning Commission does not take immediate action on items presented under Oral Communications.

General Information

The Planning Commission usually meets on the 2nd and 4th Thursday of each month. [Exceptions: Only one meeting in August 27, November 12, and December 10.] Commission meetings are held in the City Council Chambers at 3300 Capitol Avenue.

Stenocaptioning and/or earphones for people who are hearing impaired are available from the Recording Clerk 15 minutes prior to the meeting. A driver's license will be held as a deposit. Commission meetings are open captioned for the deaf in the Council Chambers and closed captioned for home viewing. Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 2 working days in advance of the meeting by contacting the Planning Department at (510) 494-4440. Planning Commission meetings are open captioned for the deaf in the Council Chambers and closed captioned for home viewing. For more information on Planning Commission please visit our website at http://www.fremont.gov/Construction/PlanningCommission/default.htm or contact the Planning Department at (510) 494-4440.

The regular meetings of the Fremont Planning Commission are broadcast on Cable Television Channel 27.

Availability of Public Records

All disclosable public records relating to an open session item on this agenda that are distributed by the City to all or a majority of the Historical Architectural Review Board less than 72 hours prior to the meeting will be available for public inspection at 39550 Liberty Street during normal business hours, at the time the records are distributed to the Planning Commission.

Copies of staff report are available at the Development Services Center at 39550 Liberty Street (between Stevenson Blvd. and Walnut Ave.) and at City Hall at 3300 Capitol Avenue the week of the meeting and are free of charge. Plans and other supporting documents may be viewed any day until noon the day of the Planning Commission meeting. Copies will be provided at cost when feasible. The Development Services Center is open 8 a.m. to 4 p.m., Mondays through Thursdays; and 8 a.m. to 12 p.m., Fridays.

Planning Commission final agendas, which include location maps, staff reports and proximity maps can also be viewed on the Internet at http://www.fremont.gov/CityHall/PlanningMeetings/default.htm.

The Planning Commission meetings are now also live over the Internet. Please note: Live webcasts are only available when the Planning Commission is in session. If the Planning Commission is not in session, the web browser will return a "busy" error.

To send an e-mail message to all of your Planning Commissioners send your message to: planning_commission@fremont.gov

To leave a voice message for any of the Planning Commissioners, dial the numbers listed below:

David Bonaccorsi: 494-4895 *4998 Yogi Chugh: 494-4895 *4992 Richard King: 494-4895 *4995 Dirk Lorenz: 494-4895 *4997 Daniel Lydon: 494-4895 *4993 Lisa Quan: 494-4895 *4996

Dr. Rakesh Sharma: 494-4895 *4994

We appreciate your interest in the conduct of your City's business. Information about the City or the items discussed in this report may be referred to:

Planning Commission Secretary City of Fremont Planning Division 39550 Liberty Street, P.O. Box 5006 Fremont, CA 94537-5006 Telephone: 510-494-4440

Planning Commissioners

Richard King, Chairperson
Dr. Rakesh Sharma, Vice Chairperson
David Bonaccorsi
Yogi Chugh
Dirk Lorenz
Daniel Lydon
Lisa Quan

City Staff

Jeff Schwob/Wayne Morris, Planning Commission Secretaries
Joan Borger, Assistant City Attorney
Scott Rennie, Senior Deputy City Attorney
Alice Malotte, Recording Clerk

This page Left page Internally Internal Page Internal Page



AGENDA FREMONT PLANNING COMMISSION MEETING, MARCH 12, 2009 COUNCIL CHAMBERS, CITY HALL, 7:00 P.M.

1. PRELIMINARY

| 1.1 | CALL TO | ORDER |
|-----|---------|--------------|
| | | |

- 1.2 SALUTE TO THE FLAG
- 1.3 ROLL CALL
- 1.3a WELCOME COMMISSIONER LISA QUAN
- **1.4 APPROVAL OF MINUTES** Regular Meeting of February 12, 2009.
- **1.5 GROUP PHOTO:** Planning Commission Webpage Photo
- 1.6 DISCLOSURES

2. CONSENT CALENDAR:

NOTICE: ITEMS ON THE PUBLIC HEARING CALENDAR MAY BE MOVED TO THE CONSENT CALENDAR IF NO ONE IS PRESENT TO SPEAK ON THE ITEMS. ALL APPLICANTS AND INTERESTED PERSONS ARE ADVISED TO BE PRESENT AT THE START OF THE MEETING.

Item 2. <u>BAYSIDE BUSINESS PARK DEVELOPMENT AGREEMENT ANNUAL</u> REPORT - S. TERMINUS OF FREMONT BOULEVARD - (PLN2005-00085) -

to consider a City Manager's report on an Annual Review of Development Agreement DA-92-1 (Bayside Business Park Phase II) for a 159-acre property located at the northwest corner of Interstate 880 and Dixon Landing Road in the Industrial Planning Area. An annual review is not subject to the California Environmental Quality Act (CEQA) per Guideline 15378.

Project Planner - Cliff Nguyen, (510) 494-4769, cnguyen@fremont.gov

Recommended Continue to a date uncertain.

Action:

LUNARE DEVELOPMENT - 42100 BLACOW ROAD - (PLN2009-00089) - to consider a Finding for Site Plan and Architectural Review, Tentative Tract Map No. 8001, and Private Streets to allow 38 new townhomes located in Irvington Planning Area. A Mitigated Negative Declaration has been prepared and circulated for this project in accordance with the requirements of the California Environmental Quality Act (CEQA).

Project Planner - Susan Summerford, (510) 494-4549, ssummerford@fremont.gov

Recommended Continue to April 9, 2009.

Action:

FARWELL MEDICAL OFFICE BUILDING - FARWELL DRIVE - (PLN2009-00123) - to consider a Planned District Minor Amendment, Site Plan and Architectural Review, a Planned Unit Development Rescission, and a Finding for Floor Area Ratio increase for a new two-story 32,600 square foot medical office

building on a currently vacant and unaddressed 1.4-acre parcel (APN 531-0412-011-00) located on Farwell Drive in the Irvington Planning Area. This project is exempt from the California Environmental Quality Act (CEQA) per Guideline 15332, Infill Development.

Project Planner - Joel Pullen, (510) 494-4436, jpullen@fremont.gov

Recommended Approve, subject to findings and conditions.

Action:

Item 4.

Item 5. HAZE SMOKE SHOP - 40675 GRIMMER BOULEVARD - (PLN2009-00131) -

to consider a Conditional Use Permit to allow a head shop to occupy a vacant commercial building located in the Irvington Planning Area. This project is exempt from California Environmental Quality Act (CEQA) per Guideline 15301, Existing

Project Planner - Steve Kowalski, (510) 494-4532, skowalski@fremont.gov

Recommended Approve, subject to findings and conditions.

Action:

ABC MAGIC MOMENTS - 4600 CAROL AVENUE - (PLN2009-00139) - to Item 6. consider an amendment to Conditional Use Permit PLN2003-00274 to add 800 square feet of classroom space to accommodate an additional 22 children and two additional teachers (53 children and 5 teachers total) to an existing pre-school located in the Irvington Planning Area. This project is exempt from the California Environmental Quality Act (CEQA) per Guideline 15301, Existing Facilities Project Planner - Spencer Shafsky, (510) 494-4452, sshafsky@fremont.gov

> Recommended Approve, subject to findings and conditions.

Action:

Item 7. HEARTS & HANDS DAY CARE - 4111 ALDER AVENUE - (PLN2009-00140)

- to consider an amendment to conditional use permit U-61-121B to accommodate a day care facility within an existing church facility located in the Centerville Planning Area. This project is exempt from the California Environmental Quality Act (CEQA) per Guideline 15301, Existing Facilities.

Project Planner - Tanu Jagtap, (510) 494-4537, tjagtap@

fremont.gov

Recommended Approve, subject to findings and conditions.

Action:

Item 8. GENERAL PLAN AND HOUSING ELEMENT ANNUAL REVIEW - CITYWIDE - (PLN2009-00165) - to consider an annual report on the status of the General Plan and Housing Element Implementation. An annual report is not subject to the California Environmental Quality Act (CEQA) per Guideline 15378. Project Planner - Momo Ishijima, (510) 494-4531, mishijima@fremont.gov

Recommended Recommend accepting annual report on the General Plan and

Action: Housing Element (this agenda report and Exhibit A) to

Council.

3. PUBLIC/ORAL COMMUNICATIONS

4. PUBLIC HEARING ITEMS

Item 1. SUTRA ULTRALOUNGE - 6050 STEVENSON BOULEVARD - (PLN2009-

<u>00047</u>) - to consider a Conditional Use Permit to allow an eating place with alcoholic beverages and a nightclub with hours of operation until 2:00 AM to occupy a 10,200 square foot tenant space with 2,000 square feet of mezzanine floor area (12,200± total square feet) in Phase I of The Globe Planned District, P-2006-10. A Mitigated Negative Declaration has been prepared and circulated in accordance with the requirements of the California Environmental Quality Act.

Project Planner - Steve Kowalski, (510) 494-4532, skowalski@fremont.gov

Recommended Action:

To consider the application and either approve or deny based on the results of its analysis. If the Commission decides to approve, then staff recommends doing so based on findings and subject to conditions contained in Exhibit "C".

5. MISCELLANEOUS ITEMS

Item 9. ELECTION OF OFFICERS FOR 2009

Information from Commission and Staff:

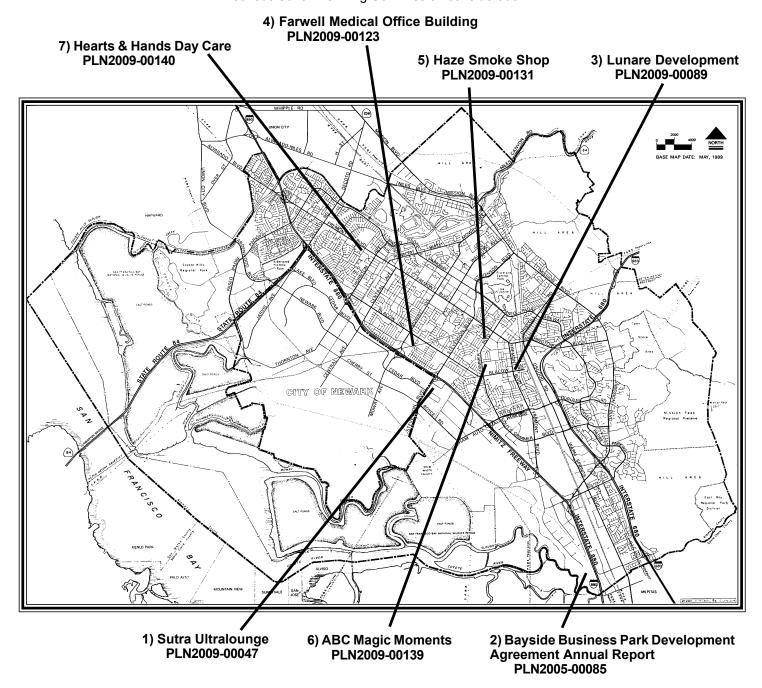
- Information from staff: Staff will report on matters of interest.
 - Report on actions of City Council Regular Meeting
 - Peridot at Niles Regis Homes: Modifications Proposed for Planned District P-2007-263; Project Planner Wayne Morris, (510) 494-4729, wmorris@fremont.gov
 - Mission Road Homes—Santa Clara Development Modifications Proposed for Planned District P-2006-344
- Information from Commission: Commission members may report on matters of interest.

6. ADJOURNMENT

City Council Chambers 3300 Capitol Avenue Fremont, CA 94538

Proximity Map

This map shows the general location of projects (by file number) which are scheduled for Planning Commission consideration.



Citywide: 8) General Plan and Housing

Element Annual Review PLN2009-00165



PLANNING COMMISSION STAFF REPORT MARCH 12, 2009

Project: SUTRA ULTRALOUNGE (PLN2009-00047)

Proposal: To consider a Conditional Use Permit to allow an eating place with

alcoholic beverage service and a nightclub with hours of operation until 2:00 AM to occupy a 10,200 square foot tenant space with 2,000 square feet of mezzanine floor area (12,200± total square feet) in Phase I of The Globe

Planned District, P-2006-10.

Recommendation: To consider the application and either approve or deny based on the results

of its analysis. If the Commission decides to approve, then staff recommends doing so based on findings and subject to conditions contained

in Exhibit "C".

Location: 6044 Stevenson Boulevard in the Industrial Planning Area

APN: 531-0240-033-00

(See aerial photo on next page)

Floor Area: $\pm 12,200$ square feet

People: Imperial Investment & Development (contact: Fred Kim), property owner

Status Entertainment & Restaurants, Inc. (contact: Jenny Wolfes), applicant Steve Kowalski, Staff Planner, (510) 494-4532; skowalski@fremont.gov

Environmental Review: A mitigated negative declaration has been prepared and circulated for this

project in accordance with the requirements of the California Environmental

Quality Act.

General Plan: High Volume Retail

Zoning: Planned District, P-2006-10

EXECUTIVE SUMMARY:

The applicant is proposing to combine four tenant spaces in the first phase of The Globe commercial development into a 12,200± square foot restaurant with sales of alcoholic beverages for on-site consumption that will convert into a bar/nightclub after dinner hours and remain open until 2:00 AM nightly with an occupancy capacity of approximately 1,300 persons. As proposed, the restaurant portion of the business would occupy the front half of the space with the rear half generally remaining closed during lunch and dinner hours and opened only for private parties and when the nightclub opens in the evening. Under the Globe's Planned District (PD) Standards and Design Guidelines, one nightclub may be considered in the PD subject to the approval of a discretionary permit by the Planning Commission as a conditional use. The purpose of a conditional use permit is to allow the proper integration of uses into the community which may only be suitable in specific locations in a zoning district, or only if such uses are designed in a particular manner on the site or subjected to a specific set of operating conditions. The Planning Commission may either deny this application or approve it with conditions it deems necessary. Staff has assembled a list of suggested conditions of approval should the Commission decide to approve the proposed use; these conditions are attached as Exhibit "C".

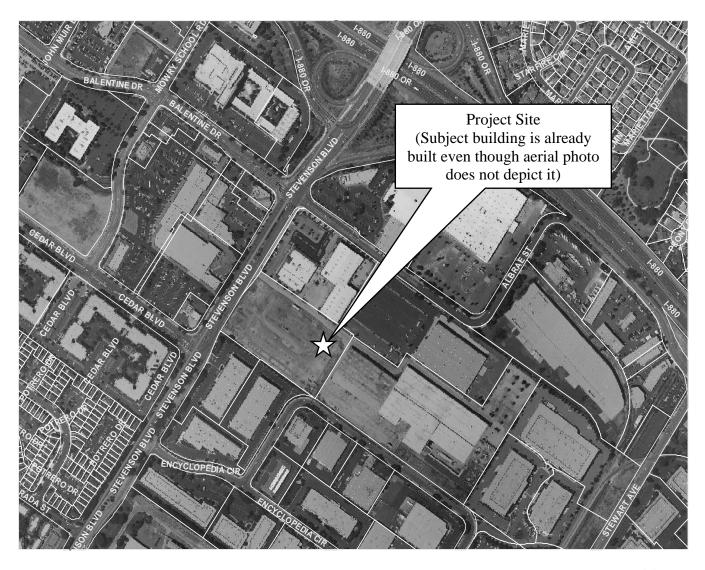


Figure 1: Aerial Photo (2006) of Project Site and Surrounding Area.



SURROUNDING LAND USES: North: Shopping center uses (C-R zone)

South: Industrial uses (G-I zone)

East: The Globe (commercial development)

West: City of Newark (Community Commercial [west/northwest],

and High Density Residential [west/southwest])

BACKGROUND AND PREVIOUS RELATED ACTIONS:

On March 7, 2006, the City Council approved a General Plan Amendment to re-designate the subject site from General Industrial to High Volume Retail (PLN2005-00061). On February 17, 2007, the Council approved the establishment of Planned District P-2006-10 (hereafter referred to as The Globe) for the property, a proposal that featured 557,900 square feet of commercial space, including 469,900 square feet of retail commercial floor area and an 88,000 square foot mini-storage facility. The PD contains land use regulations governing the specific uses allowed in The Globe. The regulations allow the consideration of one nightclub as a discretionary use within the PD. The subject building was developed as part of the first phase of The Globe. It was completed in late 2007 and is currently partially occupied by a small number of restaurants.

The City of Fremont encourages the development of arts and culture and recognizes that entertainment establishments such as nightclubs support such activities. However, entertainment establishments that are not properly operated can create an environment with the potential for excessive noise generation and disorderly conduct by patrons, particularly at closing times, with resultant adverse public safety impacts on the surrounding businesses and residential communities. This has occurred with other nightclubs in Fremont in the past. The City has experienced a number of serious problems related to patron conduct and lack of effective management at various nightclub venues throughout the City. Recent incidents have included physical fights involving multiple individuals, two homicides, two attempted homicides, multiple stabbings, shots fired, and a rape. Other problems experienced include public drunkenness, vandalism of cars and businesses, public urination and other illegal and disruptive activities. Fremont police have had to spend an inordinate amount of time responding to these incidents to prevent and control major disturbances, which has affected other areas of the City by depleting the availability of police resources. In some instances, the response to problems at these establishments has required assistance from other public agencies. The City has not had effective measures in place in its municipal code to regulate nightclub-type entertainment establishments.

In an effort to address this lack of adequate regulation, on January 27, 2009 the City Council adopted a licensing ordinance for nightclubs that will be administrated and enforced by the Police Department. This ordinance will regulate "places of entertainment", which are defined as commercial establishments where patrons may drink alcoholic beverages and dance to live and/or recorded music. It will require all new establishments of this nature to apply for a renewable license and comply with operating requirements pertaining to, among other things, security, noise control, patron management, hours of operation, employee training, and admission of minors. Applicants must also meet certain eligibility requirements in order to operate a place of entertainment. Staff from the City Attorney's office met with the applicant's attorney after the Council adopted the ordinance to work on some minor amendments to the language that will subsequently be presented back to the Council as an ordinance amendment.

Should the Planning Commission approve this application, staff proposes that it include a condition of approval requiring the applicant to obtain a "place of entertainment" license under the new ordinance prior to opening for business. The Commission should note that the new ordinance does not replace the conditional use permit process for nightclubs or otherwise restrict the Commission's discretion in granting, denying, or conditioning a conditional use permit for a nightclub. If there are any conflicting conditions between an approved use permit and a license, the applicant will be required to comply with the more restrictive condition.

Item 1: Sutra Ultralounge - sk PLN2009-00047 March 12, 2009 Page 3 of 11

PROJECT DESCRIPTION:

The applicant is proposing to combine four adjacent tenant spaces into a single, 12,200± square foot restaurant that will be converted into a nightclub after dinner service has ended. The restaurant portion of the business will measure approximately 5,060 square feet and feature a full service sit-down restaurant and bar in the front half of the tenant space. The restaurant will eventually serve lunch and dinner daily, but the applicant is uncertain as to what the specific daily business hours will be at this time because in her opinion it is currently not economically viable to remain open for business every day because there is a lack of critical mass in The Globe. As more tenant spaces become occupied and further development takes place throughout the PD, the applicant intends to be open for business seven days a week with standard lunch and dinner hours.

When the restaurant has closed for the evening, the nightclub will occupy the full 10,200 square feet of ground floor area as well as two mezzanines totaling 2,000 square feet, bringing the total floor area to 12,200 square feet. Seating booths will be provided around the perimeter of the dining room with stackable tables provided on the main floor that can be moved when the restaurant switches over to a nightclub. Booths will also be provided around the perimeter of the nightclub portion and on both mezzanines. DJ booths, wall-mounted television screens, a dance floor, and two bars will be provided in the nightclub portion, and the kitchen will remain open late nights to provide food service to the nightclub clientele. Occasionally the venue will host live music, generally through promotions held by local radio stations. The applicant is proposing to have the establishment eventually remain open until 2:00 AM seven nights a week, but she expects that on some nights early in the week the nightclub will close earlier due to lack of sufficient business.

The applicant will only allow patrons 21 years of age or older in the nightclub. The restaurant will be required to close at least 30 minutes prior to the opening of the nightclub each evening and all underaged patrons will be required to leave the establishment at that time. Security personnel will then check each patron's identification inside the restaurant to ensure that all minors have vacated the premises before the nightclub opens. Those that are 21 or over will be given a stamp identifying them as such and be allowed to remain.

The applicant is proposing to install an enclosed 456 square foot outdoor seating and smoking area on the end of the building for patrons of the restaurant and nightclub. The existing planters adjacent to the end of the building will be slightly reduced in size to provide the space needed for the enclosure, but an additional planter will be added on the same end of the building which will actually result in a net gain of 10 square feet of additional planter area (see Proposed Patio Plan in Exhibit "B"). The enclosure will be monitored by security personnel during nightclub hours to ensure that nobody from outside the establishment attempts to enter the establishment through it. No other exterior changes to the building are proposed; only interior tenant improvements needed to accommodate the proposed floor plan. To mitigate for noise impacts identified during the environmental review of the project, the applicant will construct a noise-buffering vestibule inside of the main entrance which will be used whenever music is being played inside the nightclub.

Item 1: Sutra Ultralounge - sk PLN2009-00047 March 12, 2009 Page 4 of 11

PROJECT ANALYSIS:

General Plan Conformance

The General Plan land use designation for the project site is High Volume Retail. This land use designation is intended to provide for retail and service uses along major thoroughfares with easy access to vehicular traffic such as "big box" retailers, auto-oriented uses and entertainment complexes. The following General Plan Land Use Goals and Policies are applicable to the proposed project:

- ➤ **Fundamental Land Use Goal F8** A diversity of residential, recreational, cultural, employment and shopping opportunities.
- Land Use Policy 2.33 Eating and Drinking Establishments are allowed in areas designated High Volume Retail.

Analysis

The Globe is intended to be a lively, multi-use shopping and entertainment complex containing retail shops, restaurants and entertainment options. When The Globe PD was approved, the City Council included a provision providing that one nightclub may be considered in the PD subject to the approval of a discretionary permit by the Planning Commission. The proposed nightclub will provide an entertainment venue for those people who wish to go out for an evening of live music and dancing. In addition, the nightclub's location along Stevenson Boulevard just west of Interstate 880 in a largely commercial and industrial area whose businesses will typically be closed while the club is open will help minimize impacts on surrounding businesses. For these reasons, the proposed use is consistent with the goals and policies of the General Plan.

Zoning Analysis

Conditional Use Permit:

The project site is located with Planned District P-2006-10. The PD Standards and Design Guidelines for this Planned District provide that one nightclub may be considered within the PD subject to discretionary approval by the Planning Commission. In order to approve a conditional use permit the Commission must make the following findings:

- (a) The proposed use is consistent with the General Plan;
- (b) The site is suitable and adequate for the proposed use;
- (c) The proposed use and design would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services;
- (d) The proposed use would not have a substantial adverse economic effect on nearby uses;
- (e) The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood, or the community at large; and

Item 1: Sutra Ultralounge - sk
March 12, 2009
Page 5 of 11

(f) The project will comply with the provisions of Article 27 of the Zoning Ordinance (Site Plan and Architectural Approval).

Discussion:

- (a) General Plan Consistency: The proposal is consistent with the General Plan in that eating and drinking establishments which provide cultural and recreational activities such as live entertainment and dancing are permitted on land designated High Volume Retail in the Land Use Element of the General Plan.
- (b) Site suitability and adequacy: While the Globe PD provided for consideration of one nightclub as a discretionary use, it did not anticipate the combination of four of the tenant spaces (and additional patio space) to create such a large club. The building as it was originally constructed will not prevent noise from the club's sound system from emanating at levels that could exceed the City's noise standards at the nearest residential units located across Stevenson Boulevard in the City of Newark. Any approval must be conditioned on requiring noise mitigation measures that will enable the use to comply with these standards. The addition of the patio for an outdoor smoking area has been preliminarily reviewed by the Building Division and Fire Department for compliance with building safety and accessibility codes. Portions of the sidewalk where the enclosure will be located will be made narrower to accommodate the enclosure, but all required exit routes and accessible paths of travel will be maintained in accordance with building code requirements.
- (c) Impact on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services: The accessibility of the site and the abundance of adjacent parking on the property make it adequate for occupancy by the proposed use. Traffic generated by the proposed use will not adversely impact the road network of the surrounding area or overburden parking facilities in that the club will open its doors in the late evenings well after the afternoon rush hour has ended, and close to or after the time that most other adjacent business have closed for the evening.

The City's experience has been that nightclub uses can create impacts which strain the ability to deliver police services throughout the City. To ensure that the club's activities do not deplete police services throughout the rest of the City, the applicant will be required to provide licensed private security and implement various safety measures to the satisfaction of the Police Chief at all times while the club is open for business.

- (d) Economic Impact on nearby uses: There is one other nightclub in the vicinity but it caters to a very specific clientele (in this case, fans of Country Western music), therefore there is no reason to believe the proposed use would adversely impact that business. In addition, according to the property owner, other businesses have indicated a desire to lease nearby tenant spaces within the Planned District if the nightclub is able to open in order to capture business from its clientele.
- (e) Impact to the general welfare of persons residing in the immediate vicinity, the neighborhood, or the community at large: Noise from the club and club patrons leaving at night could negatively impact the nearby residential neighborhood. To ensure that noise from the club's sound system does not adversely impact nearby residents, the applicant will be required to construct a noise-

Item 1: Sutra Ultralounge - sk PLN2009-00047 March 12, 2009 Page 6 of 11 buffering vestibule directly inside the main entrance and install a volume limiter on the sound system. In addition, operational controls must be in effect so that patron behavior does not impact neighboring residents and property owners, or the community at large.

(f) Compliance with applicable regulations: The project will comply with all applicable regulations of Article 27 of the Zoning Ordinance in that the applicant will be required to obtain approval from the Development Organization, including the Planning, Building and Landscape Architecture divisions, for the interior and exterior modifications being made to the property.

Design Analysis

Site Planning/Circulation:

The only change proposed to the existing site plan will be the addition of an enclosed outdoor seating/smoking area at the end of the building adjacent to the drive aisle. This enclosure will be used for outdoor dining during lunch and dinner hours, and converted to an outdoor smoking area during nightclub hours. The enclosure has been preliminarily reviewed by the Building Division and Fire Department for compliance with building safety and accessibility codes. Portions of the sidewalk where the enclosure will be located will be made narrower to accommodate the enclosure, but all required exit routes and accessible paths of travel will be maintained in accordance with Building Code requirements.

Parking:

The applicant is proposing to construct two mezzanines inside the tenant space for use by patrons of the nightclub. The mezzanines will add approximately 2,000 square feet of seating area to the space. Per Section 8-22003 of the Zoning Code, the parking requirement for bars/nightclubs is one space for each 80 square feet of floor area. Therefore, the addition of the mezzanines would result in the need for an additional 27 parking spaces. The entire site, including the large building which the proposed use intends to occupy and the smaller, freestanding building containing East-West Bank and Cyclo Café required 277 parking spaces based upon a shopping center ratio of 1 space/250 square feet. A total of 293 spaces have been provided on the site, or 16 more than the required amount.

When staff reviewed the parking requirements for The Globe PD it analyzed the parking needs for the entire development - not each parcel on a parcel-by-parcel basis - because it was assumed that some patrons visiting the PD would park their cars in one location and walk throughout the development to other locations. The PD approval allowed for a maximum of 115,000 square feet of total restaurant floor area, and the parking plan for the PD was designed to accommodate that amount of restaurant floor area at build-out. To date, some five restaurants totaling 32,559 square feet have been approved in the PD. Therefore, the proposed restaurant/nightclub would bring the total square feet to 44,759, still well under the 115,000 square foot limit of the original PD approval. The final parking plan for the entire PD actually featured a 33-space surplus; therefore, there is more than enough parking throughout the PD to accommodate the restaurant limit and the additional spaces needed for the nightclub's mezzanines. Furthermore, because the nightclub will generally open its doors after the majority of other tenants in the PD have closed for the evening, staff believes there is no need for additional parking to be provided.

Item 1: Sutra Ultralounge - sk
March 12, 2009
Page 7 of 11

Architecture:

The only change proposed to the existing building is the installation of a patio enclosure on the end of the building to allow for outdoor dining for restaurant patrons and smoking for nightclub patrons. This enclosure will be required to be designed to match the architectural style and color scheme of the building. The final design will be subject to review and approval by the Planning Director.

Landscaping:

There are three existing planters in the sidewalk between the end of the building and the parking lot drive aisle. In order to accommodate the proposed outdoor dining/smoking area, two of these planters will each be reduced by an area approximately 5' x 8', resulting in a total reduction of 80 square feet of planter area. To offset this reduction, the applicant will install a new planter measuring approximately 90 square feet in the same sidewalk a few feet away from the two planters being affected. The City's Landscape Architecture Division reviewed the proposed changes and found the new design acceptable.

Security Measures for Nightclub Operations:

Under the California Building Code, a nightclub of this size is allowed a maximum occupancy of approximately 1,300 people at any given time. At the present time, the Fremont Police Department has limited resources during late nights to respond in the event that a large disturbance such as a brawl or riot occurs. The need for police services at the site could significantly limit service to the rest of the City. For this reason, the applicant will be required to employ a professional security firm to monitor the establishment at all times. The security firm will be required to monitor the premises in and around the nightclub and the parking lot, control queues, entrances and exits, check identifications, and enforce clientele conduct codes. Security staff will be required to wear uniforms that are clearly identifiable, and "under-cover" security personnel dressed in plain clothes will also mingle with the clientele to closely monitor all of the patrons and identify potential problems. None of the security personnel will be armed with weapons of any kind.

Due to the remote location of the site and the fact that the Police Department has limited resources during late evenings, and because the maximum occupancy of the club allows for such a large number of patrons, the Police Chief has requested a ratio of one security officer for every 50 patrons. As further security measures, the applicant will be required to install video cameras to monitor the interior, main entrance, and parking areas immediately adjacent to the nightclub, and security staff will conduct regular parking lot sweeps during business hours and after the club has closed until all patrons have departed. In addition, all bartenders, servers and managers will be required to complete responsible beverage service training courses conducted by the Department of Alcoholic Beverage Control (ABC) within 90 days of being hired, and proof of completion of the course by each employee must be maintained on the premises at all times.

Applicable Fees:

The additional square footage being added to the tenant space will be subject to Citywide Development Impact Fees. This includes fees for fire protection, capital facilities, and traffic facilities. All applicable fees shall be calculated and paid at the fee rates in effect at the time of building permit issuance for the tenant improvements that must be made to the spaces to accommodate the proposed use.

Item 1: Sutra Ultralounge - sk
March 12, 2009
Page 8 of 11

Environmental Review:

An Initial Study and Draft Mitigated Negative Declaration were prepared for this project in accordance with the requirements of the California Environmental Quality Act (CEQA). The Initial Study determined that the project could have potential adverse impacts on public services by overtaxing the City's police services in the event a serious incident occurred at the nightclub in the late evening or early morning hours, and that noise generated by the playback of music over the club's sound system could have a significant impact on the residential units located across Stevenson Boulevard in Newark. Because the project may have significant environmental impacts, a Draft Mitigated Negative Declaration was prepared and circulated for public review for 20 days from December 30, 2008 through January 20, 2009 in accordance with the public review period requirements of CEQA (see Exhibit "A"). The applicant has agreed to implement mitigation measures that would reduce the impacts the project may have to a less-than-significant level. These mitigation measures have been included as conditions of approval on the project. As such, staff recommends the Planning Commission adopt the Mitigated Negative Declaration and Mitigation Monitoring Plan as presented in Exhibit "A".

PUBLIC NOTICE AND COMMENT:

Public hearing notification is required for the entitlement being requested. A total of 258 notices were mailed to the owners and occupants of all property within 300 feet of the site, including residents of the Murieta condominium complex on the corner of Stevenson and Cedar Boulevard in the City of Newark. The notices were mailed out on Wednesday, February 25, 2009. A Public Hearing Notice was also published in The Tri-City Voice on this same date.

ENCLOSURES:

Exhibits:

Exhibit "A" Mitigated Negative Declaration/Mitigation Monitoring Plan

Exhibit "B" Proposed Development Plans

Exhibit "C" Findings and Conditions of Approval

Informational Items:

- 1. Initial Study
- 2. Business Proposal and Security Plan submitted by applicant
- 3. Ordinance pertaining to regulation of "Places of Entertainment" adopted by City Council on January 27, 2009

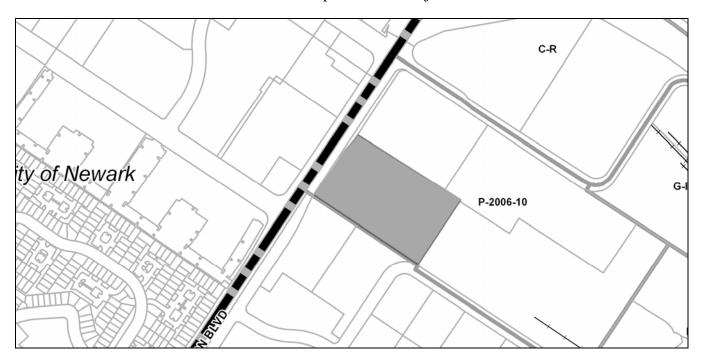
Item 1: Sutra Ultralounge - sk
March 12, 2009
Page 9 of 11

RECOMMENDATION:

- 1. Hold public hearing;
- 2. Adopt the Mitigated Negative Declaration and Mitigation Monitoring Plan as shown in Exhibit "A" and find that they have evaluated the potential for this project to cause any adverse effect, either individually or cumulatively, on wildlife resources, and find that these actions reflect the independent judgment of the City of Fremont;
- 3. Find that PLN2009-00047 is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the designations, goals and policies set forth in the Land Use Element of the General Plan, as enumerated within the staff report; and
- 4. Approve PLN2009-00047 as shown in Exhibit "B", based on the findings and subject to the conditions contained in Exhibit "C"; or
- 5. If the Planning Commission opts to deny the proposed Conditional Use Permit application, then direct staff to prepare findings for denial based upon direction from the Planning Commission.

Item 1: Sutra Ultralounge - sk
March 12, 2009
Page 10 of 11

Existing ZoningShaded Area represents the Project Site



Existing General Plan



Exhibit "C"

Findings and Conditions of Approval PLN2009-00047 - Sutra Ultralounge Conditional Use Permit 6044 Stevenson Boulevard

FINDINGS:

The findings below are made on the basis of information presented at the public hearing and contained in the staff report to the Planning Commission dated March 12, 2009, incorporated hereby:

Conditional Use Permit:

- (a) The proposed use is consistent with the General Plan in that uses that offer cultural or recreational opportunities may be allowed on land designated High Volume Retail in the Land Use Element of the General Plan, and the Planned District Guidelines and Regulations adopted for The Globe development specifically allow one nightclub within the PD subject to approval of a discretionary permit by the Planning Commission;
- (b) The site is suitable and adequate for the proposed use in that it features ample parking, convenient access and visibility for customers as well as emergency and law enforcement personnel, and is located far enough away from residential uses that, with the implementation of certain noise mitigation measures, noise from the nightclub will not have an adverse impact on residents living in the area:
- (c) The proposed use and design would not have a substantial adverse effect on vehicular, bicycle or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services in that the vast majority of traffic it will generate will occur late at night well after the afternoon rush hour and close to or after most nearby businesses have closed for the evening, and private security will be provided in accordance with the requirements of the Chief of Police to monitor the premises and maintain the safety of the patrons and surrounding properties;
- (d) The proposed use would not have a substantial adverse economic effect on nearby uses in that there is only one other nightclub use in the area and that club caters to a different clientele (fans of Country Western music);
- (e) The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood, or the community at large in that the applicant will be required to provide licensed private security at all times while the club is open for business to the satisfaction of the Police Department, and to ensure that noise from the club's sound system does not adversely impact nearby residents, the applicant will be required to construct a noise-buffering vestibule inside of the main entrance and install a volume limiter on the sound system which will limit the volume to maximum levels as recommended by the acoustical expert who prepared the noise study for the environmental review of the project; and

Item 1: Sutra Ultralounge Exhibit "C"- sk March 12, 2009 (f) The project will comply with the provisions of Article 27 of the Zoning Ordinance (Site Plan and Architectural Approval) in that the applicant will be required to obtain approval from the Development Organization for all changes being made to the building and property.

CONDITIONS OF APPROVAL:

General Conditions

- 1. The approval of this conditional use permit shall allow the establishment and operation of a 12,200± square foot restaurant with alcoholic beverage service and nightclub as shown in Exhibit "B" (Site Plan and Floor Plan), and subject to compliance with all of the conditions of approval set forth herein.
- 2. Minor modifications to this conditional use permit may be made subject to review and approval by the Planning Director if such modifications are in keeping with the intent of the original approval. However, the Planning Director may refer any modification to the Planning Commission when the Director feels the request is of such a nature that it warrants consideration by the Commission.
- 3. A copy of these conditions of approval shall be kept on the premises and made available to any peace officer/employee of the City upon request.
- 4. If the Planning Director finds evidence that any of the following conditions of approval have not been fulfilled or that the use has resulted in a substantial adverse effect on public health, safety, and/or general welfare, he/she may refer the conditional use permit to the Planning Commission for review. If upon such review the Planning Commission finds the project has resulted in a substantial adverse effect on the public health, safety and/or general welfare, the Commission shall reserve the right to modify or revoke the approval of the use.
- 5. Signage is not a part of this review. The applicant shall apply for a sign permit. All signage shall conform to the Planned Sign Program adopted for Phase I of The Globe.

Conditions to be satisfied prior to issuance of a Certificate of Occupancy

- 6. Final plans for the project shall be submitted to the Development Organization for review and approval to ensure compliance with relevant codes, policies and other requirements of the Fremont Municipal Code, these conditions of approval, and any other associated approvals.
- 7. The applicant shall apply for and obtain a Place of Entertainment License from the City prior to the commencement of any nightclub-related activities at the premises.
- 8. The main phone line for the establishment shall be set up to receive concerns and/or complaints from neighboring property owners, tenants and residents, and the proprietor shall designate a staff person whose duties shall include responding to any calls received. The proprietor shall notify all adjacent property owners and tenants within 300 feet of the property of this phone number by

Item 1: Sutra Ultralounge Exhibit "C"- sk

March 12, 2009

Page 2 of 6

- means of a postcard or other form of mass mailing prior to the opening of the nightclub. A copy of this notice shall also be provided to the Planning Division at the same time the mailing takes place.
- 9. The applicant shall meet all requirements of the currently-adopted editions of the California Building, Fire, and City of Fremont Municipal Codes in effect at the time of building permit.
- 10. The applicant shall install a monitored N.F.P.A. 13 fire sprinkler system and N.F.P.A. 72 voice notification fire alarm system complying with all local amendments. The fire alarm system shall be U.L. certified.
- 11. Any outdoor area heating systems shall be subject to review and approval by the Fire Department.
- 12. The outdoor dining/smoking enclosure shall be made of a durable material such as metal, and shall be designed to match the existing architectural style and color scheme of the building. Final design of the enclosure shall be subject to review and approval by the Planning Director.
- 13. The applicant shall construct an acoustically-lined sound lock vestibule inside the main entrance to the establishment. The walls and roof of the sound lock shall consist of a 5/8" thick layer of gypsum board on each outer side of 3-5/8" deep studs with R-13 insulation provided in the stud cavities. The interior surfaces of the walls and roof of the vestibule shall be internally lined with 2-inch thick sound-absorptive panels such as Rebound Panels supplied by Wall Technology (www.walltechnology.com), or similar.
- 14. The parking lot shall be posted with signs stating "No loitering or consumption of alcoholic beverages." A plan showing the location, size and quantity of said signs shall be provided as part of the building permit application and be subject to review and approval by the Fremont Police Department prior to final occupancy.
- 15. The address of the business shall be clearly visible from the front and rear of the building. The address shall be illuminated during the hours of darkness.
- 16. The applicant shall have a key box (Knox brand) located outside of buildings/gates and provide keys to the Fire Department for access. Applications can be obtained at the Fire Department Administration Office located at 3300 Capitol Avenue, Fremont, CA, phone: (510) 494-4280.
- 17. The parking lot shall be properly illuminated during hours of darkness.
- 18. Security cameras shall be strategically placed to monitor and record areas that the Fremont Police Department deems important (parking lot, exterior, and interior of the building). Camera quality, lighting, and position must be at a high standard to ensure images are useful for law enforcement investigations and criminal prosecution. All images must be recorded and retained for at least 30 days. The exact location, specifications and quantity of said cameras shall be subject to approval by the Police Department prior to final occupancy.

Item 1: Sutra Ultralounge Exhibit "C"- sk March 12, 2009

19. The applicant shall comply with the provisions of the permits required from any state or regional agencies, including, but not limited to, the Union Sanitary District and the Alameda County Department of Environmental Health.

Ongoing operational conditions of approval to be complied with at all times (these conditions shall be in addition to the standard operating conditions of the Place of Entertainment License; the stricter condition shall prevail in the event of any discrepancy between these conditions and the standard operating conditions of the Place of Entertainment License).

- 20. The applicant/operator and all successive operators shall maintain and comply with the terms of the Places of Entertainment ordinance and license conditions at all times. Failure to comply with said terms may be grounds for revocation of this Conditional Use Permit.
- 21. Hours of operation: The nightclub and restaurant may remain open seven days a week but shall close by 2:00 AM every night. No patrons shall be admitted after 1:00 AM, and no alcohol sales shall occur after 1:30 AM. All music shall end by 1:45 AM. If after 60 days of operation no problems have occurred requiring police activity, the applicant/operator may request permission from the Chief of Police to extend the admittance cut-off time to 1:15 AM.
- 22. No patrons under the age of 21 shall be allowed to enter the nightclub at any time. The restaurant shall close and all under-aged customers must vacate at least thirty minutes before the nightclub opens. All patrons entering the facility must provide valid picture identification to the security staff prior to entering. The applicant may develop an alternative plan to ensure under-aged customers vacate the restaurant before the nightclub opens; however, any such plan must be in writing and shall be approved by the Fremont Police Department.
- 23. Adult-oriented business or entertainment as defined under Section 8-2102 of the Fremont Municipal Code shall not be permitted at any time.
- 24. The number of persons located within the nightclub may not exceed the maximum occupancy allowed by the California Building Code (CBC). The maximum occupancy number shall be issued by the Building Official upon approval of building permit for the nightclub and shall be clearly posted at all times in accordance with the requirements of the CBC.
- 25. In addition to posting maximum occupant load signs, the applicant and facility operator shall provide the current occupant load count to City of Fremont Police or Fire Departments upon request. One employee shall be assigned to monitor occupancy load at all times while the nightclub is open for business. If at any time the Fire Department or Police Department determines that the nightclub has exceeded its maximum occupancy, the Fire Marshal reserves the right to require the applicant/operator to install an automatic occupancy counting system to the satisfaction of the Building and Fire Departments.
- 26. Private, licensed security guards shall be provided as follows: one (1) security guard for each 75 persons or fraction there of, but no less than five (5) at any time. The security guards must be licensed through the State of California and must comply with Sections 5-5100-5-5108 of the Fremont Municipal Code. Security Guards shall not be armed and must wear clothing that is

Item 1: Sutra Ultralounge Exhibit "C"- sk March 12, 2009

easily identifiable (at a minimum, a polo-type shirt or similar uniform with the word "Security" prominently displayed on the back of the garment). Security management and door monitors may wear a suit but must also wear a badge identifying them as security at all times. Security personnel may not wear any type of uniform that is similar to the City of Fremont Police Department. The nightclub shall not open for business until the minimum required number of security personnel is present and prepared to commence security duties. Security staff must remain on-site until the nightclub is closed and all patrons have departed from the parking lot.

- 27. Applicant or operator must notify the Fremont Police Department at least 72 hours in advance of any promotional events (expected increase of patrons beyond the norm) and meet and confer with the Department regarding the security plan for the event. The applicant or operator must adjust the number of security officers for the particular event as necessary to ensure a safe event.
- 28. The applicant shall not lease or rent the tenant space or a portion of the establishment to an outside promoter and shall not advertise or use a different name for the venue or any portion of it. Theme names may be permitted for different parties on different nights, but the name of the venue shall remain the same at all times.
- 29. A security supervisor (easily identified as such) who has the ability to effectively communicate (via radio or cell phone) with other security officers must be on-site during all nightclub hours of operation. The Security Supervisor shall be the contact for Fremont Police Officers.
- 30. All male patrons shall be subject to a metal detector and pat-down search prior to entering the nightclub. All female patrons shall be subject to metal detector and purse/handbag searches. Female patrons may be subject to pat-down searches at the discretion of the security personnel.
- 31. Dress code must be properly posted near the entrance of the club and shall be strictly enforced by security personnel.
- 32. Patrons shall not be allowed "in-and-out" privileges. Patrons may be allowed to go outside for a legitimate reason, but they shall be subject to the same admission procedures when they return as when they first entered the nightclub (re-entering the queue, presenting valid identification, etc.).
- 33. Security officers shall monitor queues that form outside the premises to ensure that patrons are behaving peacefully, not blocking sidewalks, roadways, required exits or entrances to adjacent businesses, or vandalizing the property in any way.
- 34. Security officers shall conduct restroom and smoking area sweeps at irregular intervals not to exceed 30 minutes to ensure that criminal activity is not taking place in these locations.
- 35. Security officers shall patrol the parking lot and will remain in the parking lot until all the patrons have left. The applicant must develop a policy on how security officers will address intoxicated patrons leaving the parking lot; the policy must be approved by the Fremont Police Department. Security officers will be responsible to patrol surrounding parking lots (including City of Newark) to deter club-associated criminal or nuisance activity.

Item 1: Sutra Ultralounge Exhibit "C"- sk March 12, 2009

- Security personnel shall provide a written report/statement for criminal violations occurring on or near the premises and sign a Consolidated Arrest Form for any citizen's arrests it initiates. Security personnel shall participate, when requested, in court procedures which result from criminal activity occurring on or near the nightclub's premises.
- 37. Employees who are responsible for alcohol sales must complete necessary Department of Alcoholic Beverage Control (ABC) training within 90 days of their hiring date.
- Alcoholic beverages (all types) may only be served in accordance with State of California Department of Alcoholic Beverage Control licensing requirements. No alcoholic beverages may be served or consumed outside of the establishment.
- The applicant shall comply with all applicable state and local laws and regulations pertaining to smoking.
- The applicant shall provide at least one (1) fully functioning water fountain inside the premises at all times.
- The sound-buffering vestibule doors and all windows and other doors (except the main entrance leading into the sound-buffering vestibule and the doors to the outdoor smoking area) shall remain closed during nightclub business hours.
- The applicant shall install a noise limiter on the amplification system for both recorded music and live music to restrict the interior volume level to 105 dBA and 120 dBC.
- 43. All activities shall take place in the interior of the tenant space and no amplification of music or voice is allowed outside.
- Special effects or events which diminish the effectiveness of fire protection systems, occupant notification systems, or infringe upon the means of egress are prohibited.
- 45. Pyrotechnic displays are prohibited at all times.
- The property owner is responsible for litter control and graffiti control/abatement, and for the 46. sweeping/washing of all paved surfaces. Sidewalks, parking lots, and other paved areas must be swept regularly to prevent the accumulation of litter and debris from patrons of the nightclub. If pressure washed, debris must be trapped and collected to prevent entry into the storm drain system. No cleaning agents may be discharged to the storm drain.

END OF CONDITIONS

Item 1: Sutra Ultralounge Exhibit "C"- sk

This page Left page Internally Internal Page Internal Page

PLANNING COMMISSION MEETING MARCH 12, 2009

Applicant: <u>BAYSIDE BUSINESS PARK DEVELOPMENT AGREEMENT ANNUAL</u>

REPORT - S. TERMINUS OF FREMONT BOULEVARD - (PLN2005-

00085)

Proposal: To consider a City Manager's report on an Annual Review of Development

Agreement DA-92-1 (Bayside Business Park Phase II) for a 159-acre property located at the northwest corner of Interstate 880 and Dixon Landing Road in the Industrial Planning Area. An annual review is not subject to the California

Environmental Quality Act (CEQA) per Guideline 15378.

Project Planner - Cliff Nguyen, (510) 494-4769, cnguyen@fremont.gov

Recommended Action: Continue to a date uncertain.

This page Left page Internally Internal Page Internal Page

PLANNING COMMISSION MEETING MARCH 12, 2009

Applicant: <u>LUNARE DEVELOPMENT - 42100 BLACOW ROAD - (PLN2009-00089)</u>

Proposal: To consider a Finding for Site Plan and Architectural Review, Tentative Tract

Map No. 8001, and Private Streets to allow 38 new townhomes located in Irvington Planning Area. A Mitigated Negative Declaration has been prepared and circulated for this project in accordance with the requirements of the

California Environmental Quality Act (CEQA).

Project Planner - Susan Summerford, (510) 494-4549,

 $ssummer ford @\, frem ont. gov$

Recommended Action: Continue to April 9, 2009.

This page Left page Internally Internal Page Internal Page



PLANNING COMMISSION STAFF REPORT MARCH 12, 2009

Project: FARWELL MEDICAL OFFICE BUILDING - (PLN2009-00123)

Proposal: To consider a Planned District Minor Amendment for Site Plan and

Architectural Review, a Planned Unit Development Rescission, and a Finding for Floor Area Ratio increase for a new two-story 32,600 square foot medical office building on a currently vacant and unaddressed parcel.

Recommended Action: Approve, subject to findings and conditions.

Location: Farwell Drive in the Irvington Planning Area.

APN 531-0412-011-00 (See aerial photo next page)

Area: 32,600 square foot proposed building on a 1.4-acre lot

People: Dr. Basil Besh, Applicant

Anthony Cataldo, Ware Malcomb, Architect Michael Walsh, Stevenson Trust, Owner

Joel Pullen, Staff Planner (510) 494-4436; jpullen@fremont.gov

Environmental Review: This project is exempt from the California Environmental Quality Act

(CEQA) per Guideline 15332, Infill Development.

General Plan: Community Commercial Center

Zoning: Planned District, P-67-2 & Planned Unit Development, PUD-72-5

EXECUTIVE SUMMARY:

The applicant proposes to construct a new 32, 600 square-foot two-story medical office building on a vacant parcel in the Mowry East Shopping center. Although medical office uses are already permitted in the Planned District, the Planning Commission is reviewing a Planned District Minor Amendment for Site Plan and Architectural Review and a Finding to allow a Floor Area Ratio Increase for an additional approximately 2,100 square feet. Associated site development includes a range of vehicular and pedestrian accessways, landscaping, utility connections, drainage and stormwater treatment measures, and grading typically required with new development on a vacant site. Staff recommends that the Planning Commission approve the project subject to findings and conditions of approval.



Figure 1: Aerial Photo (2006) of Project Site and Surrounding Area.



SURROUNDING LAND USES: North: Mowry East Shopping Center

South: Hetch-Hetchy Water Line Easement

East: Single-family homes across Flood Control Channel West: Farwell Drive along Mowry East Shopping Center

BACKGROUND AND PREVIOUS ACTIONS:

In 1968, Planned District P-67-2 was approved for a commercial area south of Mowry Avenue between Blacow Road and Farwell Drive. The "Los Arboles I & II" proposal included a phase one commercial project along Mowry Avenue, layout of which was part of Planned Unit Development PUD-71-2, and a phase two apartment project along the southeast side of the property, layout of which was contemplated under PUD-72-5. However, the entirety of the center remained commercial, and the City subsequently approved additional commercial developments over portions of PUD-72-5, including an Orchard Supply Hardware store in 1980 and a Wendy's drive-through restaurant in 1985 (P-67-2C). Other uses within this commercial block include a bank, auto repair shop, grocery stores, restaurants, and other miscellaneous retail and service uses. The proposed project would represent development of the last vacant parcel within the Mowry East Shopping Center.

When the shopping center was approved in the 1960s, no health services were permitted within the Zoning district upon which Planned District P-67-2 was based. The General Plan designation has since been changed to Community Commercial, and the comparable Zoning district of the same name allows health services as a principally permitted use per FMC 8-21101(b)(19). On March 2, 1995, The Community Development Director approved Planned District Minor Amendment P-67-2K, which allowed "offices and clinics of doctors of medicine, dentists, doctors of osteopathy and other health practitioners" as permitted uses on and near the subject site. There has been a dentist's office in the shopping center since 1995. The proposed tenant mix for the approximately eleven rental units could range from dentists' to doctors' offices.

PROJECT DESCRIPTION:

The applicant proposes to construct a two-story, 32,600-square-foot tilt-up medical office building on a vacant parcel between Farwell Drive and Orchard Supply Hardware in the Mowry East Shopping Center. The proposal includes required vehicular and pedestrian access, perimeter and other buffer landscaping, drainage and water treatment facilities, and associated utility appurtenances. See the Design Analysis section for further discussion of the proposed design.

PROJECT ANALYSIS:

General Plan Conformance:

The existing General Plan land use designation for the project site is Community Commercial. The proposed project is consistent with the existing General Plan land use designation for the project site because the General Plan allows for offices, with the focus being "to provide neighborhood and Citywide services." The following General Plan Goal and Policy are applicable to the proposed project:

FUNDAMENTAL GOAL 8: A diversity of residential, recreational, cultural, employment and shopping opportunities

Analysis: The proposed medical office building would provide jobs in the course of offering medical care to the community.

Policy LU 2.21:

New development [in the Mowry/Blacow Community Commercial Center (CCC)] shall be oriented toward integrating and connecting the designated CCC. Site development planning should establish connections between parcels and development projects. Building orientation, setbacks, parking locations and building design shall be evaluated for how each element encourages continuity.

Analysis: The proposed site development plans are consistent with existing development in that they provide a through sidewalk connection from Farwell Drive, proposed driveways connect well with existing driveways, and the building site is consistent with original plans for the development.

Zoning Regulations:

This site lies within the Community Commercial General Plan designation. The C-C Zoning district is most compatible with this particular designation, and forms the basis for permitted uses within this Planned District, P-67-2. As set forth in Section 8-21101(b)(19) of the Fremont Municipal Code (FMC), Health Services are allowed in the C-C district as a permitted use. In 1995, Planned District Minor Amendment P-67-2K allowed offices of doctors of medicine, dentists, doctors of osteopathy and other health practitioners as permitted uses on and near the subject site.

On June 8, 1972, the Planning Commission approved PUD-72-5 for 192 apartment units to be built on the southeast side of the Mowry East Shopping Center. Staff notified the additional property owners that, in conjunction with this proposed building, PUD-72-5 would be formally rescinded. The antiquated PUD would not, in any case, be consistent with the current General Plan or Planned District framework.

The proposed office building would be approximately 32,600 square feet within a 1.4-acre (60,984 square feet) parcel—resulting in a 0.535 Floor Area Ratio (FAR), whereas 0.50 is the maximum normally allowed in the Community Commercial District. This represents approximately 2,100 square feet of additional space. However, the usable interior square footage is approximately 29,000 square feet, and designing for medical services entails oversized equipment storage areas, wider access corridors and gurney-sized elevators due to Institutional ("I") building code occupancy requirements. The applicant has also proposed limited Monday through Saturday hours from 7 a.m. to 5 p.m. Per FMC 8-21104(i)(3), increases in FAR may be allowed based upon findings in FMC 8-22140.5. It should be noted that, although an FAR increase is required based upon the parcel size, the proposed new building would have the effect of increasing the FAR of the adjacent portion of the Mowry East Shopping Center from 0.34 to 0.35.

Parking:

The proposed 32,600-square-foot medical office building is required to have 1 parking space for each 200 square feet. Therefore, 163 spaces are required to serve this use. Through an existing reciprocal easement (a new building was previously anticipated in this location), the subject property has had nonexclusive rights to 101 parking spaces out of the total 1,116 spaces within the shopping center. A condition is proposed that the existing reciprocal easement agreement be supplemented by a new parking agreement to be reviewed by the City Attorney's office. An additional 62 new spaces are required with the new construction. These are ordinarily provided through a combination of standard,

compact, accessible, motorcycle, and bicycle spaces. The applicant plans to provide an equivalent of 71 spaces onsite. With the addition of several finger islands by landscape condition, the parking would be reduced by a few spaces through building permit review, but remain above the required standard of 62 spaces onsite. The applicant has proposed, and staff has conditioned, a commute alternative program to include carpool organization, bicycle encouragement, and free shuttle service to and from BART. See Table 1 below for a breakdown showing compliance with City of Fremont parking requirements.

Table 1: Number of Parking Spaces Provided by Type

| Parking Type | # of Spaces |
|---|-------------|
| Reciprocal Easement | 101 |
| New Standard and Accessible Spaces Onsite | 54 |
| New Compact Spaces Onsite [23% planned where 35% is allowed by FMC 8-22003(e)] | 16 |
| 9-Bicycle Capacity Lockup Rack [8-bike rack counts as one space per FMC 8-22010(a)] | 1 |
| Total Parking Provided (32,600/200=163 required) | 172 |

Design Analysis:

Site Planning:

The applicant proposes to construct the building in line with the neighboring Orchard Supply Hardware building, providing a wrap-around driveway with a bordering sidewalk and planter area connecting to the existing on-site spine between Blacow Road and Farwell Drive. The drive aisle directly in front of the tower element features decorative paving for aesthetics and to slow down traffic near the entry.

Architecture:

The proposed two-story office building is a relatively simple rectangular 99' by 167' tilt-up design approximately 33' tall with a projecting tower element of approximately 37' centered on its northwest elevation. The bottom 2/3 of the tower element is wrapped with stone on either side of the two-story glass revealing the primary entry lobby. Symmetrically-simple paired sets of windows with 1/4-sized upper light panes sit one above the other on both floors all the way around the building. There are metal canopies suspended in front of the two-story height of glass above the double-glass doors at the primary entry and above six other single glass doors featuring sidelights and transom windows on various other elevations. A system of vertical and horizontal reveals serves to break up the building façade. An emergency generator enclosure in the corner of the southeast elevation appears to be integrated into the building design in that it is a full story in height and follows the architectural, material, and color pattern for the rest of the building. In addition, a 126-square-foot detached masonry refuse and recycling enclosure in a relatively hidden, but accessible, area near the northeast corner of the site is also provided.

Although "green building" measures above and beyond building code requirements are voluntary for private commercial projects in Fremont, environmentally beneficial features proposed for the project include a cool roof, dual-glazed insulated glass windows where single glazing would be permitted by code, and plans for employee lockers and access to showers for use by bicycle commuters. By virtue of complying with local codes, the building collects various LEED points in such categories as landscape-based stormwater treatment, Title 24 energy requirements, light pollution reduction, water-efficient landscaping, recyclable storage and collection, and the building's infill location near restaurants, residential neighborhoods, and services.

Open Space/Landscaping:

Approximately 12,000 square feet of landscaping is proposed onsite in a system of parking lot perimeter planting areas, sidewalk borders, and treatment areas. The most usable of these areas is at the rear of the building, which features a sitting area with several tables and chairs and separates the building from a triangular depressed open turf area that doubles as a component of the water treatment measures. There are four such treatment areas on site (driven by the Hydro-modification Management Program) within the wide angles created by the edges of the driveways and parking bays.

The applicant has proposed a total of 31 additional trees onsite. Twin Chinese Pistache trees flank the primary building entry, while a series of London Plane trees surround the parking lot. The applicant proposes to plant Chinese Elms in the rear of the building nearest to the triangular eating area. There are also 8" to 12" Chinese Elms on the street frontage that the applicant proposes to retain and supplement with an additional specimen where the existing unfinished driveway apron that was to serve Union Sanitary District's (USD) easement is to be removed. The street tree and all six primary trees along the primary driveway would be 24" box, while the balance of trees onsite would be 15-gallon-sized.

A planter approximately 6 feet wide including fragrant Germander and Rosemary adjoins the building's perimeter sidewalk. Rosemary is also the primary plant along the street perimeter. Due to the alignment of a sewer easement that prohibits trees along the southeast property line, the applicant has proposed 5-gallon Pineapple Guava to provide a suitable border along an existing retaining wall, which would be repaired and repainted within the scope of this project. The balance of the landscape plan calls for Grecian Laurels and Chanticleer Pear trees, with one-to-five gallon shrubs set in groundcover underneath the canopy, as is typical for this type of development. With conditions of approval, including two additional parking lot fingers near the USD easement and larger trees across the front driveway, the proposal will comply with the City's landscape requirements.

Circulation:

The proposed development is located on Farwell Drive, which is a collector street with existing street improvements along the project's frontage. The existing driveway for the commercial center from Farwell Drive will serve as an access to the project. The developer is proposing to build a centrally-located medical office building with parking loaded from a wrap-around drive aisle, which loops back to the existing commercial driveway. The developer is required to modify the street improvements by removing an existing unfinished USD driveway apron and replacing it with curb, gutter, sidewalk and a planter strip in accordance with the Street Right-of-way and Improvement Ordinance.

Grading & Drainage:

The parcel is generally flat with a mild slope from the southwest corner to the northeast corner. The surface drains onto the abutting commercial paved drive aisle. There is an existing underground storm drain that traverses the parcel from the northeast corner to the southwest corner. This storm drain connects to the on-site private main within the commercial shopping center.

Grading for the project consists of creating wrap-around central drive aisle around a central level pad for the proposed medical office building. The parking spaces are served from this central 26 foot wide drive aisle. The parking lot is sloped away from the building to the outbound curb and gutter along the perimeter of the parcel. The applicant's engineer estimates total project grading to be balanced with 615 cubic yards each of cut and fill. Runoff from pavement areas would be treated in landscape-based treatment measures before connecting to existing on-site storm drainage facilities. The on-site storm

drainage system and connection to the shopping center drainage system will be included with the construction plans for the project. The storm drain system is subject to approval of the City Engineer and the Alameda County Flood Control and Water Conservation District.

Urban Runoff Clean Water Program:

The Alameda Countywide National Pollution Discharge Elimination System (NPDES) Municipal Stormwater Permit requires all new development to incorporate measures to prevent pollutants from being conveyed in stormwater runoff and into the public storm drain system. This project is required to comply with the NPDES permit by incorporating treatment measures into the project design.

The project intends to meet the quantitative stormwater treatment requirements by installing four (4) inground infiltration planters (4% of impervious area allocation) to treat 100% of the total impervious area. In order to conform to the quantitative performance criteria of the Countywide NPDES permit, the project may be required to incorporate additional treatment control BMPs, to treat stormwater runoff. The stormwater treatment design shall be integrated into the storm drain design for the project and shall be subject to review and approval of the City Engineer prior to building permit issuance.

The project site is also required to implement flow-duration controls, which limit the rate that stormwater is discharged from the site. Flow duration controls are required because the project is located within the Hydro-modification (HM) susceptibility area and the project creates more than an acre of impervious area. The flow-duration controls will cause stormwater to be retained on site and slowly discharged into the public storm drain system, thereby preventing any increased creek erosion downstream of the project site. A stormwater treatment plan that details proposed flow duration controls/HM measures and supporting numeric sizing calculations must be provided to the City for approval prior to issuance of a building permit.

As required by the Alameda Countywide NPDES Municipal Stormwater Permit, the property owner shall enter into a maintenance agreement for the long-term operation and maintenance of stormwater treatment measures. The agreement would require the ongoing maintenance of all the designated treatment/HM facilities, including periodic replacement of media filter cartridges in the stormwater treatment vaults if applicable. The property owner shall also plan for sidewalk and pavement sweeping to help prevent debris and other pollutants from entering storm drains.

Geologic Hazards:

The project site is within a Liquefaction Zone on the official State Geologist's Seismic Hazard Zone maps. In accordance with State law, a project geotechnical and seismic hazard report is required and is subject to City review and approval prior to building permit issuance.

Applicable Fees:

This project is subject to Citywide Development Impact Fees. These fees currently include fees for fire protection, capital facilities and traffic impacts. The developer is not entitled to a development impact fee credit based on the fact that there is no record of permanent buildings having existed on this site. All applicable fees shall be calculated and paid at the office rate in effect at building permit issuance.

Environmental Review:

This project is exempt from the California Environmental Quality Act (CEQA) per Guideline 15332, Infill Development. Additionally, the applicant submitted a Phase I preliminary environmental site assessment, which identified no environmental concerns. The site has been used as a Christmas tree lot, and has not been developed since at least 1939, the earliest availability date of the area's aerial photos.

PUBLIC NOTICE AND COMMENT:

Public hearing notification is applicable. Notices to 100 owners and occupants of property within P-67-2, PUD-72-5, and otherwise within 300 feet of the site were mailed, and a Public Hearing Notice was published by *The Tri-City Voice* on February 25, 2009.

ENCLOSURES:

Exhibits:

Exhibit "A" Site Plan, Floor Plans, Conceptual Roof and Roof Equipment Plan, Architectural Elevations, Landscape Plans, and Conceptual Grading and Drainage Plans

Exhibit "B" Findings and Conditions of Approval

Informational Enclosures:

1. Applicant's Statement of Justification for Floor Area Ratio Increase

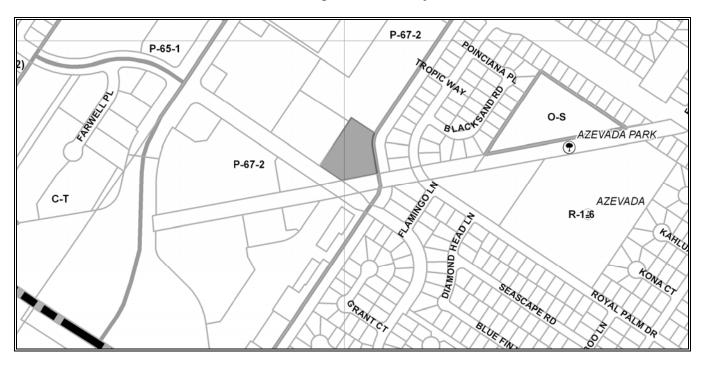
Supplemental Hearing Materials:

1. Color and Material Board

RECOMMENDATION:

- 1. Hold public hearing.
- 2. Find that the project is categorically exempt from the California Environmental Quality Act (CEQA) under 15332 of the CEQA Guidelines, infill exemption.
- 3. Find that construction of a 32,600 square-foot medical office building and associated site development as shown on Exhibit "A" for PLN2009-00123 is in conformance with relevant provisions contained in the General Plan. These provisions include the designations, goals, and policies set forth in the General Plan's Land Use Chapter as enumerated in the staff report.
- 4. Rescind Planned Unit Development PUD-72-5.
- 5. Approve Planned District Minor Amendment, Finding for Floor Area Ratio Increase, and Site Plan and Architecture PLN2009-00123, as shown on Exhibit "A", subject to findings and conditions in Exhibit "B".

Existing ZoningShaded Area represents the Project Site



Existing General Plan

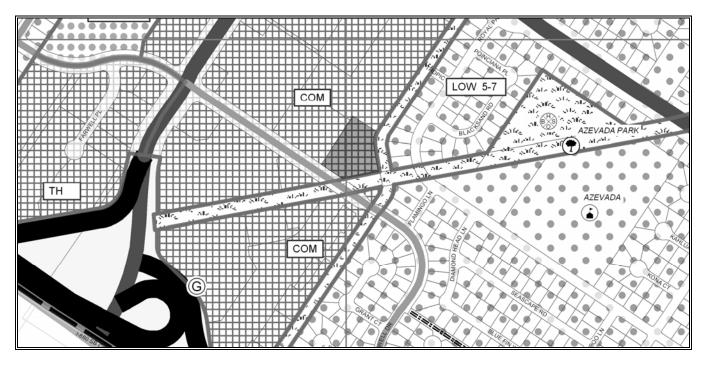


EXHIBIT "B"

Findings and Conditions of Approval

For PLN2009-00123, Farwell Medical Office Building PD Minor, PUD Rescission, & FAR Finding APN 531-0412-011-00

FINDINGS:

The findings below are made on the basis of information presented at the public hearing and contained in the staff report to the Planning Commission dated March 12, 2009, incorporated hereby.

Floor Area Ratio Increase Findings:

- a. An increase in the FAR will not be detrimental to area streets, sewer lines and/or other public services or to lighting, air quality or privacy of any other properties in the vicinity of the structure because the new building will have a minimal effect on area streets, relevant utilities have indicated that they can serve the proposed project, and the proposed building, which is within the height limit, is located on a part of the lot that is optimal with respect to potential shading or privacy impacts for single-family residences to the southeast across the flood control channel.
- b. There will be a provision in place in the form of a condition of approval guaranteeing the increased FAR will not be used to create a more intensive use than the use specified by the approved finding.

Planned Unit Development Findings:

c. That Planned Unit Development PUD-72-5 should be rescinded because existing entitlements and agreements within the shopping center, subsequent improvements existing and proposed on the site, and changes in codes and development standards over 36 years have made the development of apartments under the original entitlement infeasible as originally intended.

Planned District Amendment Findings:

- d. That the P district amendment conforms to the standards and requirements for P districts in section 8-21811 because medical office uses are permitted and construction of a building on this vacant lot was intended under the original approval of P-67-2;
- e. That the P district amendment conforms to the findings required within Section 8-21813 because;
 - 1. The proposed medical office building and associated site improvements can be substantially completed within four years from this entitlement;
 - 2. With existing and proposed agreements in place, the proposed medical office building, and the Mowry East Shopping Center as a whole, can exist as independent units capable of creating an environment of sustained desirability and stability;
 - 3. Farwell Drive, Mowry Avenue, Blacow Road, and existing and proposed internal driveways are suitable and adequate to carry anticipated traffic, and the FAR increase will not generate traffic in such amounts as to overload the street network;

- 4. By virtue of the facts that the market has previously driven modification of Planned District P-67-2 to permit medical offices, the underlying General Plan and Zoning permit the use, and the applicant is actively seeking establishment of a medical office facility, this type of facility can be justified economically at this location;
- 5. An exception from standard FAR requirements is warranted by the design and amenities incorporated into the proposal in accordance with adopted Planning Commission and City Council policies, because the building location is optimal for separation from residential and avoidance of shading or privacy impacts, because of the proposed conforming 37' maximum height where 40' is allowed, because of the buffering perimeter flood control and Hetch-Hetchy water parcels; because usable interior square footage is approximately 29,000 square feet; and due to oversized equipment storage areas, access corridors and gurney-sized elevators required by Institutional ("I") building code occupancy requirements;
- 6. The surrounding area can be planned and zoned in coordination and substantial compatibility with the proposed development due to the fact that the proposed use is in conformance with existing regulations;
- 7. Medical office uses in the Community Commercial area are in conformance with the general plan of the City of Fremont; and
- 8. Proposed connections to existing utilities will be adequate for an office building of this size.
- f. That the P district amendment is in keeping with the original intent of the Planned District approval because medical office uses are permitted, and the use is compatible with existing development types and uses in the vicinity.

CONDITIONS OF APPROVAL:

General Conditions

- 1. Except as modified by the conditions herein, the project shall substantially conform to Exhibit "A" (Site Plan, Floor Plans, Architectural Elevations, and Landscape Plans), including a 32,600 square-foot two-story medical office building in the Mowry East Shopping Center
- 2. Construction-level detailed plans for the original construction or any future modifications shall be submitted to the City for review and approval to ensure conformance with conditions herein, as well as with relevant provisions of the Fremont Municipal Code, State, and federal law. As reviewed through building permit issuance and at any time after construction of the building, the increased FAR shall not be used to create a more intensive use than the medical office uses allowed within Planned District P-67-2. Accordingly, uses within the proposed building may not require a higher parking ratio than the approved 1/200 ratio.
- 3. Minor modifications to the approved building designs and siting, elevations, and colors may be made, subject to review and approval of the Planning Director or the Director's designee, if such modifications are in keeping with the architectural statement of the original approval. However, the Planning Director shall retain the authority to determine the level of review required (i.e., depending upon the scope of the modification, the project may be referred to the Planning Commission for review and approval.

4. This project is subject to Citywide Development Impact Fees. These fees currently include fees for fire protection, capital facilities and traffic impacts. All applicable fees shall be calculated and paid at the office rate at the time of building permit issuance.

Legal Requirements/Agreements/Deed Restrictions

- 5. Prior to building permit issuance, the property owner(s) of the site shall execute and record a parking agreement for the 101 off-site spaces that shall be subject to review and approval by the City Attorney or his designee in accordance with FMC 8-22006.
- 6. The developer/property owner of the project site shall defend, indemnify, and hold harmless the City or any of its boards, commissions, agents, officers, and employees from any claim, action, or proceeding against the City, its boards, commissions, agents, officers, or employees to attack, set aside, void, or annul the approval of the project when such claim or action is brought within the time period provided for in applicable state and/or local statutes. The City shall promptly notify the provider(s) of any such claim, action, or proceeding. The City shall have the option of coordinating the defense. Nothing contained in this condition shall prohibit the City from participating in a defense of any claim, action, or proceeding if the City bears its own attorney's fees and costs, and the City defends the action in good faith.

Special Project Conditions

- 7. General business hours will be limited to Monday through Saturday between 7 a.m. and 5 p.m. Minor modifications to the hours of operation may be permitted, subject to review and approval by the Planning Director or the Director's designee.
- 8. Prior to building permit issuance, the applicant shall provide additional information about the applicant's proposed commute alternative program to the Planning Division for comment. The program details should include carpool organization, bicycle encouragement, and the proposed free employee shuttle service to and from the BART station.

Prior to Issuance of Building Permits (Plan Details and/or Modifications Required)

Site and Architectural Design

- 9. Protection for accessible entrance from weather by means of canopy or roof overhangs, extending to passenger loading zone will be required (CBC 1109B.2). The roof overhang over the loading zone shall be at least 5-ft. wide and 20-ft. long adjacent and parallel to the vehicle pull-up space. Curb ramps will be required with minimum vertical clearance of 114 inches.
- 10. Signage for the building will be reviewed in accordance with Article 21 of the Fremont Municipal Code. The proposed signage location on the tower element is appropriate for general center identification, while individual tenants of a building of this type are not entitled to exterior signage, but typically are referenced from a lobby directory. No window signage will be permitted on the building's exterior. Muted door lettering for pedestrian wayfinding to first floor units' exterior doors may be considered.

- 11. The applicant shall submit a request for new addresses for both the parcel and any tenant spaces at the time of building permit review. Only those tenant spaces being created at the time of building permit issuance will be assigned addresses. Address assignment will be to Farwell Drive.
- 12. Roof top addressing shall be applied in a contrasting color, with a minimum size of 1' by 4' in order to enable pinpoint response from emergency air support in a critical incident and afford quick mobilization of ground units.
- 13. A trash enclosure is required for all commercial properties. The single 14' x 9' bay provided is sufficient. The enclosure must be securable to keep unwanted personnel from accessing or inhabiting the structure. It must be equipped with a gate that has the ability to be locked. If a roof is subsequently installed, the distance between the top edge of the wall and the roof is to be enclosed with acceptable fencing; preferably a vertical wrought iron style. A maximum opening or gap distance of 4 inches for any enclosure opening is not to be exceeded.

Planting & Irrigation, Hardscape and Lighting

- 14. All provisions of the City of Fremont Landscape Development Requirements and Policies (LDRP) shall apply to this project unless otherwise approved by the City Landscape Architect.
- 15. The existing perimeter wall shall be repaired and painted.
- 16. During building permit review, the applicant shall work with the Development Organization to provide two additional parking lot fingers for tree planting on the southwest side of the building near the USD easement to satisfy the requirement of one tree per three parking spaces and enlarge the planter strip at the northern front corner of the building (northwest elevation) to provide a cushion of adequate space for a tree in the existing planter with the backflow preventers. Maintain minimum standard and accessible parking in consultation with the Development Organization.
- 17. Across the existing driveway from Farwell from the entry, the applicant shall work with the Development Organization to provide larger canopy trees, expanding the existing planter strips at the end of the parking bays as necessary. Minor modifications to this condition shall be subject to review and approval by the Development Organization.
- 18. All planting areas containing trees shall be free of all Utility Structures (including light standards) and other built features.
- 19. All alcoves and covered areas shall be designed to deter unauthorized loitering. Benches in the area shall be designed to prevent sleeping (ex. middle arm rest).
- 20. Landscaping shall be appropriately sized and situated in locations to maximize observation while providing the desired degree of aesthetics.
- 21. The decorative paving specified in note 10 on Sheet A1.1 in the existing drive aisle shall be pavers or stamped concrete to be reviewed and approved during building permit review. Construction within the shopping center will require coordination with other property owners.

- 22. During building permit review, coordination of light pole locations with parking lot stripes will be reviewed so that they are less likely to be hit by oversized vehicles.
- 23. During building permit review, the applicant shall submit a photometric plan, subject to review and approval by the Planning Director. The photometric plan shall identify the average illumination and the maximum light intensity throughout the site. In accordance with the Fremont Municipal Code, lighting shall be designed to avoid substantial light or glare from having an impact on the surrounding developments. All lighting fixtures shall be tamper and vandal resistant designs of high quality, with concealed lighting elements. Lights shall have sufficient power and spacing to provide a minimum maintained foot-candle level of 0.12 and a maximum of 5 in limited areas. In addition, adequate lighting of parking lots, driveways, passageways, recesses and grounds contiguous to building shall be provided with enough lighting of sufficient wattage to provide adequate illumination to make clearly visible the presence of any person on or about the premises during the hours of darkness and provide a safe environment. It is recommended that exterior lighting be either metal halide or high pressure sodium, with pole height limited to about 20 feet. The seating area on the southeast side of the building needs special lighting attention to deter loiterers and trespassers.

Public Safety Requirements

- 24. The applicant shall submit a detailed geotechnical report. The report shall include recommendations regarding pavement sections. The project plans shall be designed in accordance with the required geotechnical report. Grading shall be supervised by an engineer registered in the State of California to do such work.
- 25. The applicant shall submit a seismic hazard report (may be included as part of the required geotechnical report), which shall conform to the Seismic Hazard Mapping Act, because the site is located within an area of potential liquefaction. The report shall be peer reviewed by a City selected consultant. The applicant shall pay all associated peer review fees.
- 26. In order to maintain minimum drive aisle width for emergency vehicle access all drive aisle curbing which outlines the fire lanes, shall be painted red with white lettering reading "No Stopping Fire Lane." Text shall be at least four inches tall and shall be placed every 30 feet or portion thereof, on top of designated curbing or striping. No Stopping Fire Lane signs shall be posted at 100' intervals.
- 27. The generator shall meet applicable setback requirements to the building, property lines etc.
- 28. The applicant shall install an N.F.P.A. 13 fire sprinkler system complying with local amendments. Fire Department Connections for all sprinkler system must be no more than 100' from a fire hydrant. All inlets shall have Knox brand type caps with a metal sign/address placard at the connection.
- 29. A separate permit is required for the underground fire service, fire sprinkler, standpipe system, fire alarm systems, assembly areas, type 1 hoods, clean agents, LP gas, and medical gas.
- 30. The applicant shall have a key box (Knox brand) located outside of buildings and provide keys to the Fire Department so they may gain access.

- 31. Building address is to be plainly legible and visible from the public street. These numbers shall contrast with their background.
- 32. No trespassing/loitering signs should be posted at entrances of parking lots and other pedestrian access points with letter of enforcement on file with the police department.
- 33. All entrances to parking areas shall be posted with appropriate signs per 22658(a) VC to assist in the removal of vehicles at the property owners/managers/HOA request.

Grading Requirements

- 34. The applicant shall provide an erosion control plan, as part of the project plans, subject to review and approval by the City Engineer.
- 35. Site grading shall not obstruct natural flow from abutting properties or divert drainage from its natural watershed.
- 36. A disposal site for the off-site haul dirt materials or source for the import fill shall be approved by the City prior to the approval of the grading permit. The off-site haul truck route for the excess dirt or import fill shall be subject to the approval of the City Engineer.
- 37. Prior to issuance of a permit for land disturbance greater than one acre, the developer shall file a Notice of Intent with the State of California Water Resources Control Board and receive the State assigned WDID number. The developer shall provide a copy of the Stormwater Pollution Prevention Plan (SWPPP) for City review and maintain a copy on the job site.

Streets, Right-of-Way and Utilities or Public Improvements

- 38. The applicant shall apply for and obtain an encroachment permit for all improvements within the public right-of-way and within public service easement (PSE) or public utility easements (PUE). The encroachment permit shall be obtained prior to or concurrently with the building permit.
- 39. The existing driveway along the Farwell Drive frontage that serves as an access to the sewer easement shall be removed and replaced with curb, gutter and sidewalk per City of Fremont standards and specifications.
- 40. Utility easements for sewer, water, and other public utilities, shall be established on-site as required by the permitting utility agencies or companies. Any required utility easements shall be granted prior to issuance of the building permit.
- 41. All new utility service connections, including electrical and communications, shall be installed in underground vaults within an appropriate utility easement or public service easement.
- 42. The transformer shown in the eastern corner of the building shall be placed adjacent to the generator enclosure and screened on the southeast side with a wall high enough to screen the transformer from view and of a material and color similar to the generator enclosure and the rest of the building. A gate that maintains clearances required by utility standards for screening of pad-mounted transformers shall be provided on the northeast side of the transformer. Minor

modifications to landscaping, including eliminating two coast rosemary plants in that area and potentially modifying the adjacent sidewalk, shall be subject to review and approval by the Development Organization with an eye toward maintaining aesthetics for a greater portion of the site.

43. All utility and fire appurtenances, meters and risers shall be concealed or screened from view by materials of a design and composition compatible with the architectural treatment of the project. Unanticipated design modifications that may be required by the relevant utility in the field shall be subject to review and approval by the Development Organization.

Stormwater Facility Design

- 44. The minimum drainage slope in earthen swales shall be 1.5%. The minimum drainage slope in vegetated swales shall be 1.5%, when constructed with a subdrain system. Minimum 2% drainage slope shall be used if no subdrain is installed. Minimum requirements are subject to revision by the City Engineer upon receipt and review of soil drainage data from the project geotechnical engineer.
- 45. The project storm drain system shall conform to City standards and shall be subject to review and approval of the City Engineer and the Alameda County Flood Control and Water Conservation District. Drainage calculations shall be submitted with the grading and drainage plans for the project.
- 46. Proposed curb elevations for the street system shall not be less than 1.25 feet above the hydraulic grade line (design water surface) and at no point should the curb grade be below the energy grade line. On-site grades are to be a minimum of 0.75 feet above the hydraulic grade line.
- 47. The provided Stormwater Management Plan is conceptual only. Final approval is subject to the developer providing the necessary plans, details, and calculations that demonstrate the plan complies with the Alameda Countywide NPDES Municipal Stormwater Permit, subject to City review and approval prior to issuance of building permits.
- 48. Stormwater runoff from all impervious surface areas (100%) shall be treated prior to entering the City storm drain system. Impervious surfaces include, but are not limited to: parking lot, the building roof, and paved walkways. Runoff from at least half of all impervious surface areas (50%) shall be treated by landscaped-based treatment measures.
- 49. This project shall be subject to flow-duration controls since it creates more than one acre of impervious area and lies within a Hydro-modification (HM) susceptible area. A stormwater treatment plan that details proposed treatment/HM measures and numeric sizing calculations must be provided. This may also involve underground detention systems to meter the flows from 10% of 2 year storm events up to 10 year storm events.
- 50. In accordance with the Alameda Countywide NPDES Municipal Stormwater Permit, Order R2-2003-0021, NPDES Permit No. CAS0029831, the property owners shall enter into a maintenance agreement for the long-term operation and maintenance of stormwater treatment

- measures. The agreement shall run with the land and be recorded on the property prior to building permit issuance.
- 51. The developer is responsible for ensuring that all contractors and subcontractors are aware of stormwater quality measures contained in the Stormwater Pollution Prevention Plan (SWPPP). The developer is responsible for implementation of such measures. Failure to comply with approved BMPs will result in the issuance of correction notices, citations, or stop orders.
- 52. All public and private storm drain inlets are to be stenciled "No Dumping-Drains to Bay" using thermoplastic stencils purchased from the City of Fremont Environmental Services Division. Alternative inlet stencils or marking may be permitted, subject to approval by the Environmental Services Division.
- 53. All on-site storm drains must be cleaned at least once a year immediately prior to the rainy season. Additional cleaning may be required by the City of Fremont.

During Construction Conditions (Conditions that must be satisfied during construction.)

- 54. The applicant must submit a City of Fremont Waste Handling Plan prior to beginning any demolition or construction. The Waste Handling Plan must be approved by Environmental Services before permits are issued.
- 55. Within thirty days of completion of the work, the applicant must file a Waste Disposal & Diversion Report documenting actual diversion and disposal of construction and demolition debris, along with receipts or weight tags.
- 56. Construction hours will be limited in accordance with Section 8-2205 of the Fremont Municipal Code, and notes to this effect shall be placed on the cover sheet of the construction plans and on an all-weather notice board (format and content specified by the City) conspicuously placed adjacent to the most visible right of way for the duration of the construction activity as follows:
 - 1) Monday-Friday, 7 a.m. to 7 p.m.
 - 2) Saturday and Holiday, 9 a.m. to 6 p.m.
 - 3) Sunday, no construction activity allowed

END OF CONDITIONS

This page Left page Internally Internal Page Internal Page



PLANNING COMMISSION STAFF REPORT MARCH 12, 2009

Project: HAZE SMOKE SHOP (PLN2009-00131)

Proposal: To consider a Conditional Use Permit to allow a head shop to occupy a

vacant 2,400 square foot commercial building.

Recommendation: Approve, based on findings and subject to conditions.

Location: 40675 Grimmer Boulevard in the Irvington Planning Area

APN: 525-0960-016-00

(See aerial photo on next page)

Lot Size: 8,457 square feet (0.19 acres)

Building Size: 2,400 square feet

People: Andrew Runner and Essmat Kaid, Applicants

Rosemarie Shannon, Property Owner

Steve Kowalski, Staff Planner, (510) 494-4532; skowalski@fremont.gov

Environmental Review: This project is exempt from the California Environmental Quality Act

(CEQA) per Guideline 15301 (Leasing of an Existing Facility).

General Plan: Community Commercial

Zoning: Community Commercial (C-C) District

EXECUTIVE SUMMARY:

The applicant is proposing to open a head shop in a vacant 2,400 square foot commercial building located at 40675 Grimmer Boulevard in the Community Commercial (C-C) zoning district. In accordance with Section 8-21103 of the Fremont Municipal Code, head shops are only permitted in the C-C zoning district subject to approval of a Conditional Use Permit by the Planning Commission. Staff recommends the Planning Commission approve the proposal based on the findings and subject to the conditions of approval contained in Exhibit "B".

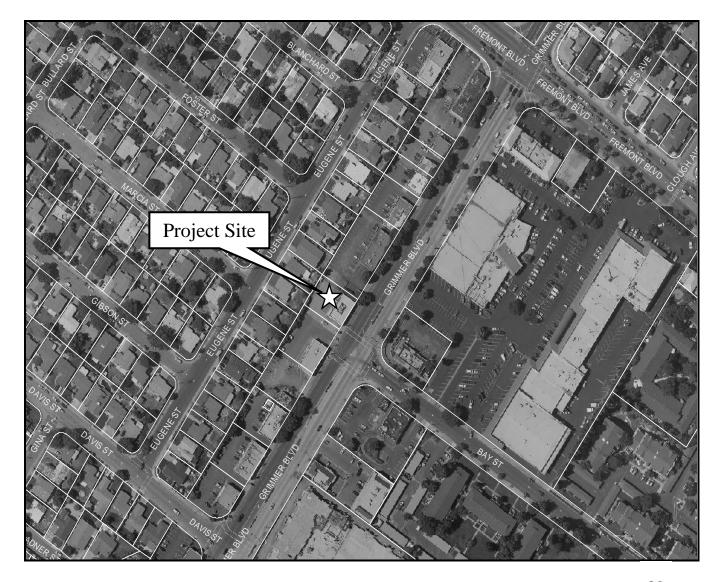


Figure 1: Aerial Photo (2006) of Project Site and Surrounding Area.



SURROUNDING LAND USES: North: Retail/personal service uses (C-C zone)

South: Retail/personal service uses (C-C zone)

East: Neighborhood shopping center (P-2004-80[I])

West: Single-family residential (R-1-6 zone)

BACKGROUND AND PREVIOUS ACTIONS:

The subject building was constructed with the proper building permits in 1977. Since that time, various retail commercial uses have occupied the property including, most recently, a thrift shop and, prior to that, a paint supply store. There is no history of planning entitlements associated with the property.

PROJECT DESCRIPTION:

The applicant is proposing to open a smoke shop in a vacant 2,400 square foot single-tenant commercial building. Items that will be sold at the shop include tobacco, cigars, cigarettes, pipes and specialty gifts such as T-shirts, incense, and lava lamps. Because some of the merchandise that will be sold from the store can be used to smoke illegal narcotics as well as legal tobacco products, the business is defined as a "head shop" pursuant to Section 8-2152 of the Fremont Municipal Code. Head shops are defined in the Zoning Ordinance as establishments engaging in the sale of merchandise which could be construed by a reasonably well-informed person as being intended for the purpose of ingesting illegal narcotics. In accordance with Section 8-21103 of the Municipal Code, head shops may only operate in the C-C zone subject to approval of a Conditional Use Permit by the Planning Commission.

The floor plan for the store will feature a 700 square foot enclosed showroom in which the head shop merchandise will be displayed. There are existing partitions already in place inside of the space which will accommodate the showroom, so no interior tenant improvements are proposed. Because by law the head shop merchandise can only be sold to adults, access to the showroom will be restricted to patrons 18 years of age or older at all times. The remainder of the store will be used to sell specialty gifts that are not required by law to be restricted to adults only. Cigars, cigarettes, and other tobacco products will be kept behind the cashier's counter in accordance with the law, and smoking will not be allowed in any area of the store at any time. A restroom for employee use only will be located within the restricted showroom. Proposed business hours will be from 11:00 AM to 10:00 PM Monday through Saturday, and 11:00 AM to 8:00 PM on Sunday.

To improve security on the site and inside of the store, the applicant will be required to install security cameras on both the front and back sides of the building, and additional surveillance cameras throughout the interior of the store to prevent shoplifting to the satisfaction of the Police Department. In addition, the two existing wall-mounted flood lights on the back wall of the building will be turned on after sunset each evening to discourage illegal activity behind the building. There is currently some graffiti on the building that will be required to be removed by the applicant prior to the opening of the business.

PROJECT ANALYSIS:

General Plan Conformance

The General Plan land use designation for the project site is Community Commercial. This land use designation is intended to provide for retail and service uses intended to serve the everyday and specialty needs of one or several neighborhoods. Development within the Community Commercial district is also

encouraged to be of a pedestrian-friendly design with buildings oriented toward the street and parking relegated to the interior or rear of the site. The following General Plan Land Use and Housing Goals and Policies are applicable to the proposed project:

- ➤ **Fundamental Land Use Goal F8** A diversity of residential, recreational, cultural, employment and shopping opportunities.
- ➤ Land Use Goal LE 3 A hierarchy of well-defined, vital commercial areas meeting the retail shopping, entertainment and service needs of Fremont residents.
- ➤ Land Use Policy LU 2.11 Uses serving several neighborhoods are encouraged (on land designated Community Commercial Center), including grocery stores, drug stores, liquor stores, specialty retail stores, and other sales.

Analysis

The proposed use will offer retail sales of unique gift items, as well as tobacco products and smoking paraphernalia not readily found in general retail businesses such as grocery stores or "big-box" retailers. Furthermore, items such as hookah pipes are an important part of certain cultures in which they are used at social gatherings much in the same way as cigars and cigarettes. For these reasons, the proposed use is consistent with the goals and policies of the General Plan.

Zoning Analysis

The project site is located within the C-C zoning district. Section 8-2152 of the Municipal Code defines a head shop as a commercial establishment engaged in the sale of merchandise which a reasonably well-informed person can construe as being intended for the unlawful administration or ingestion of drugs. Section 8-21103(n) of the Municipal Code allows head shops within the C-C zone subject to approval of a Conditional Use Permit by the Planning Commission. In order to approve a Conditional Use Permit the Planning Commission must make the following findings:

- (a) The proposed use is consistent with the General Plan;
- (b) The site is suitable and adequate for the proposed use;
- (c) The proposed use and design would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services;
- (d) The proposed use would not have a substantial adverse economic effect on nearby uses;
- (e) The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood, or the community at large; and
- (f) The project will comply with the provisions of Article 27 of the Zoning Ordinance (Site Plan and Architectural Approval).

Discussion:

- (a) General Plan Consistency: The proposal is consistent with the General Plan in that businesses engaged in the retail sale of specialty goods such as tobacco, subcultural gift products and smoking paraphernalia are permitted on land designated Community Commercial in the Land Use Element of the General Plan.
- (b) Site suitability and adequacy: The site contains ample parking and is easily accessible from the adjacent commercial properties and from surrounding residential neighborhoods where patrons may travel from, and no changes need be made to the building or site in order to accommodate the proposed use other than the installation of additional security measures to monitor the premises.
- (c) Impact on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services: The project will not involve any physical changes to the site or the surrounding street and sidewalk improvements. The property was originally developed to house a commercial business and has been occupied by various retail businesses over the years; therefore the proposed use will not generate more traffic than the previous uses that occupied the building or impact transit services or accessibility in any way. To help deter criminal activity from occurring on the site and to help the Police Department monitor the premises, the applicant will install video cameras on both the front and back sides of the building which will record footage that must be retained for a minimum of thirty days should it be needed for any criminal investigations. These security measures will result in the project not having an adverse impact on public safety services.
- (d) Economic Impact on nearby uses: There are no other business establishments in the immediate vicinity that offer similar products except for some liquor stores and convenience stores that sell cigarettes and common tobacco products; therefore, there is no reason to believe the proposed project would have a negative impact on businesses in the area.
- (e) Impact to the general welfare of persons residing in the immediate vicinity, the neighborhood, or the community at large: The proposed hours of operation are such that they should not adversely impact the adjoining residential properties in that they will not generate significant late-night traffic. In addition, the applicant will be required to comply with all applicable Health and Safety Codes pertaining to the sale of tobacco and tobacco-related products, and be required to provide fully-functioning security cameras and lighting to monitor the premises after business hours to deter criminal activity from occurring on the property.
- (f) Compliance with Article 27 of the Zoning Ordinance: The project will comply with all applicable regulations of Article 27 of the Zoning Ordinance in that the applicant will be required to obtain approval from the Development Organization, including the Planning and Building divisions, for all modifications/improvements that will be made to the property.

Security Measures/Lighting:

The building has a full glass storefront facing the street, but the rear wall is made of solid concrete block with no transparent openings other than the back entrance to the store. There is an existing surveillance

camera mounted on the back wall of the building overlooking the loading bay, and two flood lights to illuminate the parking lot. The front of the store is currently lit by recessed lighting contained in the soffit above the storefront windows. In order to further deter criminal activity behind the building after business hours, the applicant will be required to install a second camera to monitor the back entrance to the store, and additional cameras to monitor the front entrance and storefront along Grimmer Boulevard. In addition, signs prohibiting loitering will be posted throughout the site to the satisfaction of the Police Department.

Conditions of approval have also been included which require Police Department approval of the specifications and locations of all cameras and lighting, and for all surveillance equipment to remain fully functional at all times. The lighting that is ultimately required for the parking area will either be shielded or angled in such a way so as not to adversely impact the adjacent residential properties immediately behind the site. Finally, to ensure that the proposed use does not pose a nuisance to the adjacent property owners, a condition has also been included requiring an annual review of the use permit by the Planning Commission.

Environmental Review:

The proposal qualifies as a Class 1 categorical exemption pursuant to Guideline 15301 of the California Environmental Quality Act (Leasing of an Existing Facility).

PUBLIC NOTICE AND COMMENT:

Public hearing notification is required for the entitlement being requested. A total of 80 notices were mailed to the owners and occupants of all property located within 300 feet of the project site. The notices were mailed out on Wednesday, February 25, 2009. A Public Hearing Notice was also published in *The Tri-City Voice* on this same date.

ENCLOSURES:

Exhibits:

Exhibit "A" Proposed Development Plans

Exhibit "B" Findings and Conditions of Approval

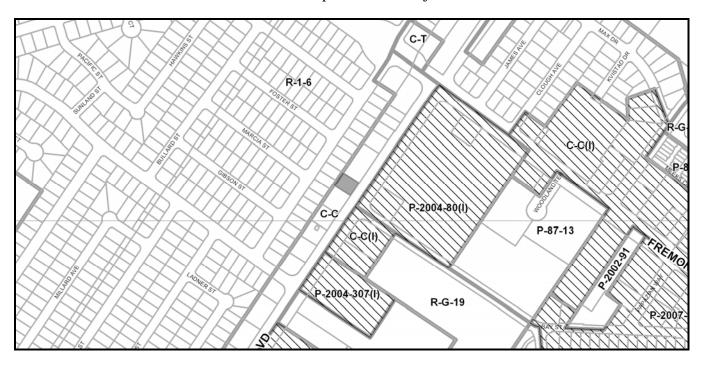
Informational Items:

Informational 1 Business Plan submitted by Applicant Informational 2 Site Photographs submitted by Applicant

RECOMMENDATION:

- 1. Hold public hearing;
- 2. Find that the project is exempt from the California Environmental Quality Act (CEQA) per CEQA Guideline 15301 which exempts projects involving the leasing of an existing facility by a use that is consistent with the current zoning and General Plan land use designation of the site;
- 3. Find that PLN2009-00131 is in conformance with the relevant provisions contained in the City's General Plan. These provisions include the designations, goals and policies set forth in the Land Use Element of the General Plan, as enumerated within the staff report; and
- 4. Approve PLN2009-00131 as shown in Exhibit "A" and described in Information Item #1, based on the findings and subject to the conditions contained in Exhibit "B".

Existing ZoningShaded Area represents the Project Site



Existing General Plan

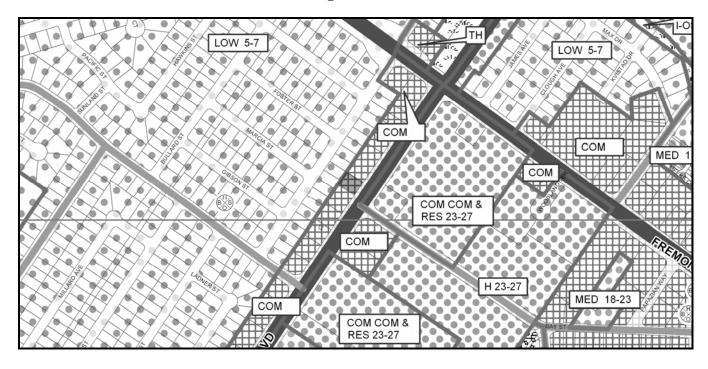


Exhibit "B"

Findings and Conditions of Approval PLN2009-00131 – Haze Smoke Shop Conditional Use Permit 40675 Grimmer Boulevard

FINDINGS:

The findings below are made on the basis of information presented at the public hearing and contained in the staff report to the Planning Commission dated March 12, 2009, incorporated hereby:

Conditional Use Permit:

- (a) The proposed use is consistent with the General Plan in that businesses engaged in the retail sale of specialty goods such as tobacco and smoking paraphernalia are permitted on land designated Community Commercial in the Land Use Element of the General Plan;
- (b) The site is suitable and adequate for the proposed use in that it features ample parking and convenient access from neighboring commercial properties, and no changes need be made to the building or site in order to accommodate the business other than the installation of additional security measures to monitor the premises;
- (c) The proposed use and design would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services for the following reasons: (a) the project will not involve any physical changes to the site or the surrounding street and sidewalk improvements; (b) the property was originally developed to house a commercial business and has been occupied by various retail businesses over the years, therefore the proposed use will not generate more traffic than the previous uses that occupied the building or impact transit services or accessibility; and (c) to help deter criminal activity from occurring on the site and to help the Police Department monitor the premises, the applicant will be installing video cameras on both the front and back sides of the building which will record footage that must be retained for a minimum of 30 days should it be needed for any investigations;
- (d) The proposed use would not have a substantial adverse economic effect on nearby uses in that there are no other business establishments in the immediate vicinity that offer similar products except for a number of liquor stores and convenience stores that sell cigarettes and common tobacco products;
- (e) The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood, or the community at large in that the applicant will be required to comply with all applicable Health and Safety Codes pertaining to the sale of tobacco and tobacco-related products, and be required to provide fully-functioning security cameras and lighting to monitor the premises after business hours; and

(f) The project will comply with the provisions of Article 27 of the Zoning Ordinance (Site Plan and Architectural Approval) in that the applicant will be required to obtain approval from the Development Organization, including the Planning and Building divisions, for the interior and exterior modifications that will be made to the property.

CONDITIONS OF APPROVAL:

General Conditions

- 1. The approval of this conditional use permit shall allow the establishment and operation of a 2,400± square foot head shop as shown in Exhibit "A" (Site Plan and Floor Plan), and subject to compliance with all of the conditions of approval set forth herein.
- 2. Minor modifications to this conditional use permit may be made subject to review and approval by the Planning Director if such modifications are in keeping with the intent of the original approval. However, the Planning Director may refer any modification to the Planning Commission if he/she feels the request is of such a nature that it warrants consideration by the Commission.
- 3. A copy of these conditions of approval shall be kept on the premises and made available to any peace officer or other employee of the City upon request. All employees shall be made aware of the requirements of this conditional use permit by the owner/operator of the business and/or his designee.
- 4. These conditions of approval shall be binding on the applicant all successors in interest. In addition, each applicant and store manager shall submit a letter to the Planning Division stating that they have read and understand the ongoing conditions of approval listed below. In case of a transfer of ownership of this business, the new owner(s) of the head shop shall obtain and sign a copy of the approved conditional use permit acknowledging that he/she/they have read and understand all of these conditions of approval.
- 5. If the Planning Director finds evidence that any of the following conditions of approval have not been fulfilled or that the use has resulted in a substantial adverse effect on public health, safety, and/or general welfare, he/she may refer the conditional use permit to the Planning Commission for review. If upon such review the Planning Commission finds the project has resulted in a substantial adverse effect on the public health, safety and/or general welfare, the Commission shall reserve the right to modify or revoke the approval of the use.
- 6. Signage is not a part of this review. The applicant shall apply for a separate sign permit prior to the installation of any permanent signage on the site. All signage shall conform to the regulations contained in Article 21 of the Zoning Ordinance (Sign Regulations) and Section 11364.5 of the State of California Health and Safety Code.
- 7. The Planning Commission shall conduct an annual review of the Conditional Use Permit. The review shall occur one year from the commencement of business operations.

Conditions to be satisfied prior to issuance of a Conditional Use Permit Certificate

- 8. The applicant shall meet all requirements of the currently adopted edition of the California Building, Fire and City of Fremont Municipal Codes in effect at the time of building permit and/or business license application.
- 9. The address of the business shall be clearly visible from the front and rear of the building and shall be illuminated during the hours of darkness.
- 10. The applicant shall have a key box (Knox brand) located outside of the building and provide keys to the Fire Department for access. Key box applications can be obtained at the Fire Department Administration Office located at 3300 Capitol Avenue, Fremont, CA, phone: (510) 494-4280.
- 11. The parking lot shall be posted with signs stating "No Loitering." A plan showing the location, size and quantity of said signs shall be provided subject to review and approval by the Fremont Police Department prior to issuance of a Conditional Use Permit Certificate.
- 12. All exterior lighting on the site shall remain fully functional and shall be kept on during all hours of darkness. Exterior lighting shall be sufficient to properly illuminate the parking lot, storefront and pedestrian walkways during the hours of darkness, and shall be subject to approval by the Police Department. All lighting shall be designed so as not to adversely impact the adjacent residential properties.
- 13. Security cameras shall be strategically placed to monitor and record areas that the Police Department deems important (including the parking lot, exterior, and interior of the building). Camera quality, lighting, and position must be at a high standard to ensure images are useful for law enforcement investigations and criminal prosecution. All images must be recorded and retained for at least 30 days. The exact location, specifications and quantity of said cameras shall be subject to approval by the Police Department prior to issuance of a business license.

Ongoing operational conditions of approval to be complied with at all times

- 14. The hours of operation shall be limited from 11:00 AM to 10:00 PM Monday through Saturday and 11:00 AM to 8:00 PM on Sunday. Any proposed changes to these hours shall be subject to review and approval by the Planning Director. The Planning Director may refer any proposed changes to the Planning Commission if he/she feels the request is of such a nature that it warrants Planning Commission approval.
- 15. The applicant is responsible for litter control and graffiti control/abatement for the parking lot, the building and all accessory structures on the site. Any graffiti on the building or property shall be removed prior to issuance of a business license.
- 16. The property owner shall be responsible for maintaining all landscaping and irrigation on the site. Any landscaping that dies or irrigation that fails shall be replaced as quickly as possible at the property owner's expense.

- 17. The applicants shall comply at all times with Section 11364.5 of the State Health and Safety Code and any amendments thereto. Any violation of Section 11364.5 or any amendments thereto shall be deemed grounds for revocation of this conditional use permit.
- 18. A self-closing door shall be installed at the entrance to this showroom, and this door shall remain closed at all times except to allow adults over the age of 18 to enter and exit.
- 19. Exterior storefront windows along the Grimmer Boulevard street frontage, as well as the rear entrance facing the parking lot shall be kept free from obstruction or non-transparent materials (such as shelving, display cases, posters, applied window tint, etc.).
- 20. All employees working in or providing access to store areas identified for sale and display of paraphernalia shall be a minimum of 18 years of age, and at least one employee 18 years or older shall be on-site during all business hours.

END OF CONDITIONS



PLANNING COMMISSION STAFF REPORT MARCH 12, 2009

Project: ABC MAGIC MOMENTS - (PLN2009-00139)

Proposal: To consider a Conditional Use Permit Amendment for the expansion of the

existing preschool building.

Recommendation: Approve, based on findings and subject to conditions.

Location: 4600 Carol Avenue (NW corner of Irvington High School property) in the

Irvington Planning Area. APN 525-0960-008-02 (See aerial photo next page)

Area: The existing preschool building, which is approximately 1,600 square feet in

area, is located on a 30 acre parcel, which also contains Irvington High School. The proposed addition is 800 square feet for a total of 2,400 square

feet.

People: Gabe Moufarrej, Applicant

Mike Smith, Architect, Consultant

Mr. and Mrs. Mendez, Property/Business Owner

Spencer Shafsky, Staff Planner (510) 494-4452; sshafsky@fremont.gov

Environmental Review: This project is exempt from the California Environmental Quality Act

(CEQA) per guideline 15301, Existing Facilities.

General Plan: Residential, 5-7 dwelling units per acre

Zoning: R-1-6, Single Family Residential District

EXECUTIVE SUMMARY:

ABC Magic Moments Preschool has submitted an application for a Conditional Use Permit Amendment to add an additional 800 square feet to the existing preschool center to accommodate a total of 53 children and five teachers, an increase of 22 children and two teachers. The proposed hours of operation are 7:30 a.m. to 6:00 p.m. Monday through Friday. The additional space will be used for classrooms.

Figure 1: Aerial Photo (2006) of Project Site and Surrounding Area.





SURROUNDING LAND USES: North: Low Density Residential

South: Irvington High School East: Low Density Residential West: Low Density Residential

BACKGROUND AND PREVIOUS ACTIONS:

In 1963, the Fremont Parents' Nursery School (FPNS) approached the Fremont Unified School District (FUSD) in search of a permanent location for their nursery school. The FUSD agreed to lease FPNS a 0.46 acre portion of Irvington High School property for the nursery school. In 2003, due to the State's budget crisis, Fremont Unified School District discontinued funding of the FPNS operation. The severed affiliation with the public entity required that FPNS apply for and receive approval of a Conditional Use Permit to continue the operation of the nursery school. On July 24, 2003, Conditional Use Permit PLN2003-00274 was approved for the nursery school operation. ABC Magic Moments acquired the facility in October 2008 and wishes to expand the existing building by 800 square feet to use as classroom space for an additional 22 children. In December 2008, the existing parking lot was upgraded to add an additional five parking spaces for a total of ten spaces.

PROJECT DESCRIPTION:

The applicant proposes to add an additional 800 square feet to the existing preschool/daycare building to accommodate an additional 22 pre-school children (2 to 5 years old) and two additional teachers. The addition will be used solely for classroom space. The existing facility currently has an adequate outside play area for the children so no modifications will be necessary to any outdoor facilities. Site improvements to the parking lot have been completed in anticipation of the expansion by creating a total of 10 parking spaces. The site has a chain link fence separating the daycare facility from the high school. The play areas are screened with wood fencing.

PROJECT ANALYSIS:

General Plan Conformance:

The existing General Plan land use designation for the project site is Low Density Residential. The proposed project is consistent with the existing General Plan land use designation for the project site. The following General Plan Goals, Objectives and Policies are applicable to the proposed project:

LAND USE (LU) GOAL 8: Provision and enhancement of day care services through a partnership of all sectors of the community.

Policy LU 8.1:

To accommodate day care needs of children, frail elderly and developmentally disabled adults, services shall be allowed in any commercial, industrial or residentially designated area, subject to conditions regarding size of facility, access, parking and the availability of outdoor space.

Analysis: This is an expansion of an existing preschool/daycare. The facility operates on property that also contains a local high school; however access and activity are facing a different street frontage.

Zoning Regulations:

As set forth in Section 8-2603 of the Fremont Municipal Code (FMC), children's nursery schools are allowed in the existing R-1-6 (residential) district subject to a Conditional Use Permit. The proposed building addition meets all required setbacks.

Parking:

This project meets all of the parking requirements. Sec. 8-22003(b)(2)f.1 of the Fremont Municipal Code states that the parking requirements for a child care nursery is three parking spaces plus one space for each ten children over a capacity of fifteen. The final capacity for this preschool is 58. The parking requirement for this project is 8 spaces. The current parking lot contains 10 parking spaces and exceeds the requirements.

Design Analysis:

Site Planning:

The addition will be located on the west portion of the existing building. The proposed location is in a landscaped area, however, that area can easily accommodate the building addition while maintaining an adequate play area for the children.

Architecture:

The existing building is approximately 1,600 square feet. It is a single story building with cream-colored painted stucco exterior. The addition as proposed will match the existing building in design, colors and materials.

Open Space/Landscaping:

This project meets the landscaping requirements. All areas surrounding the school are fully landscaped with large shrubs, turf and mature trees. No trees or shrubs are proposed to be removed for the addition.

View Impacts:

The proposed addition will not impact the views of the surrounding uses because it is a single story addition to an existing single story building.

Circulation:

The proposed development is located on Carol Avenue which has full street improvements along the project street frontage. The preschool has drop off hours from 7:30 a.m. until 9:30 a.m. and pick up hours from 3:30 p.m. until 6:00 p.m. This creates limited traffic at any one time.

Applicable Fees:

This project will be subject to Citywide Development Impact Fees. These fees may include fees for fire protection, capital facilities and traffic impact. All applicable fees shall be calculated and paid at the fee rates in effect at the time of building permit issuance.

Environmental Review:

This project is exempt from the California Environmental Quality Act (CEQA) per guideline 15301, Existing Facilities.

PUBLIC NOTICE AND COMMENT:

Public hearing notification is applicable. A total of 169 notices were mailed to owners and occupants of property within 300 feet of the site. The notices to owners and occupants were mailed on February 27, 2009. A Public Hearing Notice was published by *The Tri-City Voice* on February 25, 2009.

ENCLOSURES:

Exhibits:

Exhibit "A" (Site Plan and Elevations) Exhibit "B" (Findings and Conditions)

RECOMMENDATION:

- 1. Hold public hearing.
- 2. Find that the project is categorically exempt from the California Environmental Quality Act (CEQA) under 15301 existing facilities.
- 3. Find that this Conditional Use Permit Amendment is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals, objectives and policies set forth in the General Plan's Land Use (LU) Goal 8 as enumerated within this staff report.
- 4. Approve Conditional Use Permit Amendment PLN2009-00139, as shown on Exhibit "A", subject to findings and conditions in Exhibit "B".

Existing ZoningShaded Area represents the Project Site



Existing General Plan

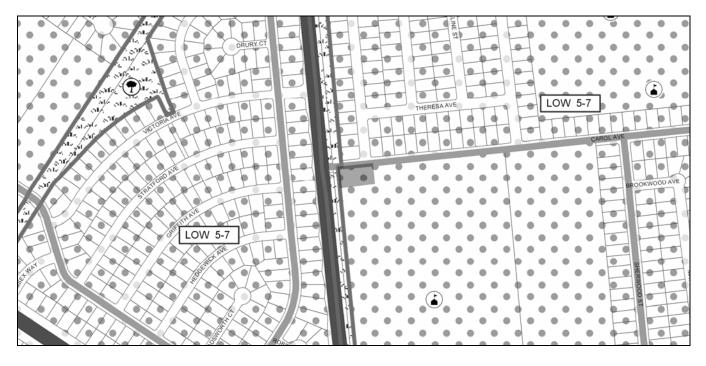


EXHIBIT "B"

Findings and Conditions of Approval For PLN2009-00139, ABC Magic Moments Conditional Use Permit Amendment 4600 Carol Avenue

FINDINGS:

The findings below are made on the basis of information presented at the public hearing and contained in the staff report to the Planning Commission dated March 12, 2009, incorporated hereby.

Conditional Use Permit Findings:

- a. The proposed use is consistent with the general plan because the existing land use designation for the property is residential, and the proposed project is consistent with allowed uses for this designation. Land Use (LU) Goal 8, provide for the enhancement of day care services through a partnership of all sectors of the community. This preschool addition gives parents another choice in the pre-elementary education of their children;
- b. The site is suitable and adequate for the proposed use because this is an addition to an existing preschool, it is not displacing areas already designated for children, it is adding to them. The site contains a 5,000 square foot outdoor play area with play structures;
- c. The proposed use and design would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services because the existing pre-school traffic plan has staggered drop off and pick up times which prevent traffic back ups on the existing street system. There is an existing parking lot with 10 designated spaces for parents to park while picking up or dropping off children;
- d. The proposed use would no have a substantial adverse economic effect on nearby uses because the site is not located near any other pre-school facility;
- e. The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood or the community at large because it is expanding the existing use by only 22 children;

CONDITIONS OF APPROVAL:

General Conditions (Must be satisfied on an on-going basis.)

- A-1. ABC Magic Moments Preschool shall conform to Exhibit "A" (Site plan and Elevations), and all other conditions of approval set forth herein. There shall be a total of 53 children allowed for the preschool. These conditions supersede conditions set forth in PLN2003-00274.
- A-2. Hours of operation shall generally be Monday through Friday from 7:30 a.m. until 6:00 p.m. Drop off and pick up times shall be dispersed from 7:30 a.m. to 9:30 a.m. and 3:30 p.m. to 6:00 p.m.

- A-3. The applicant must submit complete plans to the Development Organization (DO) for review and approval of the preschool addition. The applicant shall recognize and must agree to any modifications that may be necessary for the final approval of the preschool addition.
- A-4. The applicant shall meet all requirements of the currently adopted edition of the California Building, Fire and City of Fremont Municipal Codes in effect at the time of building permit application.
- A-5. The applicant shall comply with Fremont code requirements for installation of fire retardant roof coverings.
- A-6. Construction hours shall be limited in accordance with Sec. 8-2205 of the Fremont Municipal Code, and notes to this effect shall be placed on the cover sheet of the construction plans and on an all-weather board (content and format specified by the City) conspicuously placed adjacent to the most visible right of way for the duration of the construction activity as follows:
 - a. Monday-Friday, 7 a.m. to 7 p.m.
 - b. Saturday 9 a.m. to 6 p.m.
 - c. Sunday and Holiday, no construction activity allowed
- A-7. If the Community Development Director finds evidence that the Conditions of Approval have not been fulfilled or that the use or uses have or have resulted in a substantial adverse effect on the health, and/or general welfare of uses of adjacent or proximate property, or have a substantial adverse impact on the public facilities or services, the Director may refer this approval to the Planning Commission for review. If, upon such review, the Commission finds that any of the results stated above have occurred, the Commission may modify or revoke this approval.

END OF CONDITIONS



PLANNING COMMISSION STAFF REPORT MARCH 12, 2009

Project: HEARTS AND HANDS DAYCARE- (PLN2009-00140)

Proposal: To consider an amendment to Conditional Use Permit U-61-121B to

accommodate a day care facility within an existing church facility.

Recommendation: Approve based on findings, subject to conditions.

Location: 4111 Alder avenue in the Centerville planning area.

APN 501-0044-101-00 (See aerial photo next page)

Area: 8,721 square foot existing building on a 1.58-acre lot

People: Edward Wong, Applicant

Curtis Chin, Project Designer, C2 designs Ltd, Consultant

Alder Avenue Baptist Church, Owner

Tanu Jagtap, Staff Planner (510) 494-4537; tjagtap@fremont.gov

Environmental Review: This project is exempt from the California Environmental Quality Act

(CEQA) per section 15301, Existing Facilities.

General Plan: Residential Medium Density (15-18 dwelling units per acre)

Zoning: Garden Residential Apartment District (R-G-19)

EXECUTIVE SUMMARY:

The applicant is requesting approval of a Conditional Use Permit Amendment to U-61-121B to allow a Child Daycare Center within an existing 8,721 square feet Family Life Center building located on 1.58 acre church lot. The Child Day Care center at the Family Life Center building would be operated by "Hearts and Hands" a licensed child daycare operator, during its hours of non-use, which is between the hours of 6:30 A.M. to 6:30 P.M. Monday through Friday. "Hearts and Hands" daycare would provide educational based childcare program for children ages 2-5 for the local community. The applicant proposes minor modifications to the Family Life Center building in order to accommodate care for 35 children at one time. The child care center shall be operated under the guidelines of California Department of Social Service, Childcare Licensing Division. Staff recommends approval of the Conditional Use Permit Amendment subject to conditions.



Figure 1: Aerial Photo (2006) of Project Site and Surrounding Area.



SURROUNDING LAND USES: North: Residential Medium Density

South: Residential low Density
East: Residential Medium Density
West: Residential Low Density

BACKGROUND AND PREVIOUS ACTIONS:

The site is located approximately 300 feet southwest from the intersection of Fremont Boulevard and Alder Avenue. The original church use was approved by the Planning Commission on December 11, 1961 by a Conditional Use Permit (U-61-121). On March 12, 1992, the Planning Commission approved a new Conditional Use Permit (U-91-21) and Tentative Tract Map 6510 for the purpose of creating two lots. One of the lots, totaling 2.34 acres, has an existing 30-unit condominium development, and the other lot, totaling 1.58 acres, is the existing church parcel.

On September 12, 1996, the Planning Commission approved Conditional Use Permit amendment (U-61-121B) to allow the construction of a 13,312 square-foot Family Life Center Building, the addition of a 320 square-foot covered entry to an existing 4,400 square-foot church, and the removal of several existing structures on site. This project was never constructed by the church. On November 18, 1999, the Planning Commission approved Conditional Use Permit amendment (PLN2000-00075) to allow construction of a reduced size Family Life Center Building of 8,721 square feet, which was constructed and completed by the church.

On March 25, 2005 the Planning Commission approved Conditional Use Permit amendment PLN2005-00172 for the use of the Family Life Center Building by community groups offering educational programs; the use permit did not include child day care service.

PROJECT DESCRIPTION:

The applicant "Hearts and Hands" is requesting a Conditional Use Permit amendment to operate a Child Day care facility within the Family Life Center building located at Alder Avenue Baptist Church property. Alder Avenue Baptist Church proposes to make the "Hearts and Hands" child daycare available to the community during its hours of non-use, which is between the hours of 6:30 A.M. to 6:30 P.M., Monday through Friday. "Hearts and Hands" has proposed modification to the Family Life Center building to meet the state licensing standards for child care. Modifications to the building include occupancy reassignments of storage room and offices into classroom use; updating the indoor activity space, bathrooms, hallways and adding new exit doors. The new exit doors will match existing doors and trims. Site improvements include new concrete pathways and fencing of outdoor play areas.

PROJECT ANALYSIS:

General Plan Conformance:

The existing General Plan land use designation for the project site is Medium Density Residential (15 to 18 units per acre). The proposed project is consistent with the existing General Plan Land Use designation for the project site because the General Plan allows public and semi-public facilities within Medium Density Residential Land Use designation, subject to Conditional Use Permit approval. The proposed use specifically implements General Plan Policy LU-8.1, which supports accommodation of day care needs of children in any commercial, industrial or residentially designated area. The General Plan recognizes in the Land Use Chapter under Day Care (Private Sector, Non-Municipal – p.3-84) that "the labor participation rates show a growing number of dual working parents and single parents. This indicates a need for care and supervision of children outside the home and outside regular school hours." The following General Plan Goals, Objectives, and Policies are applicable to the proposed project:

• **FUNDAMENTAL GOAL F-8:** A Diversity of Residential, Recreational, Cultural, Employment, and Shopping Opportunities.

Analysis: The use of the Family Life Center Building for a child daycare offering educational programs provides diverse recreational and cultural opportunities, as well as employment for the teaching and administrative staff.

- Land Use Policy LU 1.1, Allowed Uses and Densities: Schools, Childcare Centers, Public and Semi Public Facilities (e.g., churches) and Nursing Care facilities. These uses may be allowed, although conditions may be established to limit the impacts of these uses on residents.
- Land Use Goal LU 8: Provision and enhancement of day care services through a partnership of all sectors of the community.
- Land Use Policy LU 8.1: To accommodate day care needs of children, frail elderly and developmentally disabled adults, services shall be allowed in any commercial, industrial or residentially designated area, subject to conditions regarding size of facility, access, parking and the availability of outdoor space.
- Land Use Policy LU 8.2: Care facilities should be located to minimize exposure to noise, localized air pollutions sources and other environmental hazards.
- **Health & Safety Policy HS 8.1.2:** Protect the noise environment in existing residential areas.

Analysis: The proposed use specifically implements General Plan policies as outlined above, which recognizes daycare centers as allowed uses with conditions established to limit the impacts on residents. Accordingly, the Conditional Use Permit establishes conditions which ensure impacts on adjacent residents are kept to a minimum.

Zoning Regulations: As set forth in Section 8-2803 of the Fremont Municipal Code (FMC), "Public and quasi-public buildings and uses of recreational, educational, religious, cultural or public service type" are allowed in the R-G district subject to a Conditional Use Permit.

The Conditional Use Permit amendment approval (PLN2005-00172) in 2005 included the use of the Family Life Center Building by community groups. The church members currently use the Family Life Center Building during its hours of non-use, 8:00 A.M. to 6:00 P.M., Monday through Friday for all educational based activities such as after school programs, tutoring programs, the office, pastoral counseling, storage, kitchen, children's programs, committee meetings, youth activities and banquet uses. The current use permit does not include child day care center. The current proposal and the purpose of the amendment to the Conditional Use Permit is to allow the use of the Family Life Center Building for educational based child care program for children ages 2-5. The day care center will be limited to the hours of operation as noted in the Project Description section of this staff report and subject to condition A-5 of Exhibit "B".

Parking:

The existing parking available onsite is 71 parking spaces, including 4 handicap accessible and 9 compact spaces. FMC Section 8-22003(b)(2)(h)(1) requires one parking space for each three seats for a religious facility with more than 150 seats (not located on an arterial.) The church is restricted to a seating capacity of 150. The required parking for the church is 50 parking spaces.

FMC Section 8-22003(b)(2)(f)(1) requires three spaces, plus one space for each ten children over a capacity of 15, which equates to a minimum of five parking spaces.

Church service hours and the proposed use of the Family Life Center Building are not expected to overlap, however, even if they do overlap, there is sufficient parking available for all anticipated uses.

Design Analysis:

Circulation/Access Analysis: The existing site has good vehicular circulation and access because of its lot configuration. An existing two-way drive aisle provides access to the rear of both the existing church and the Family Life Center Building. An emergency vehicle access easement (EVAE) exists on the perimeter of the site from the Alder Avenue frontage, along the northerly property line and westerly property line connecting at a gated opening to the adjacent private street of Alder Common, which serves the Villa Paloma townhouse development located on the west side of the church site.

Environmental Review: This project is exempt from the California Environmental Quality Act (CEQA) per section 15301, Existing Facilities.

PUBLIC NOTICE AND COMMENT:

Public hearing notification is applicable. A total of 165 notices were mailed to owners and occupants of property within 300 feet of the site. The notices to owners and occupants were mailed on February 27, 2009. A Public Hearing Notice was published by *The Tri-City Voice* on February 25, 2009.

No comments have been received to date.

ENCLOSURES:

Enclosures:

Exhibit "A" Site Plan and Floor Plans

Exhibit "B" Findings and Conditions of Approval

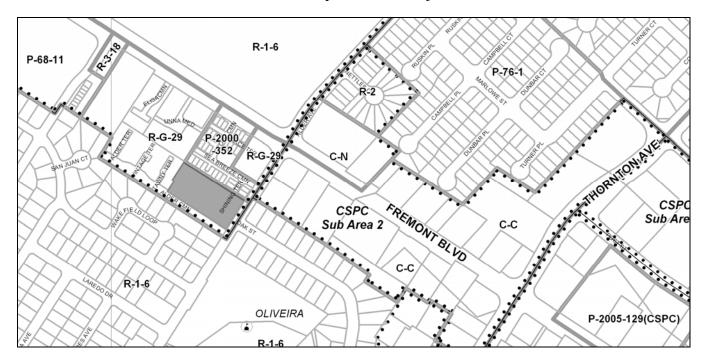
Informational Items: Applicant Statement of Proposed Operation

RECOMMENDATION:

- 1. Hold public hearing.
- 2. Find PLN2009-00140 is exempt from CEQA per Section 15301.
- 3. Find PLN2009-00140 is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Fundamental Goals and Land Use Chapters as enumerated within the staff report.
- 4. Approve PLN2009-00140, as shown on Exhibit "A", subject to Findings and Conditions on Exhibit "B".

Existing Zoning

Shaded Area represents the Project Site



Existing General Plan

Shaded Area represents the Project Site

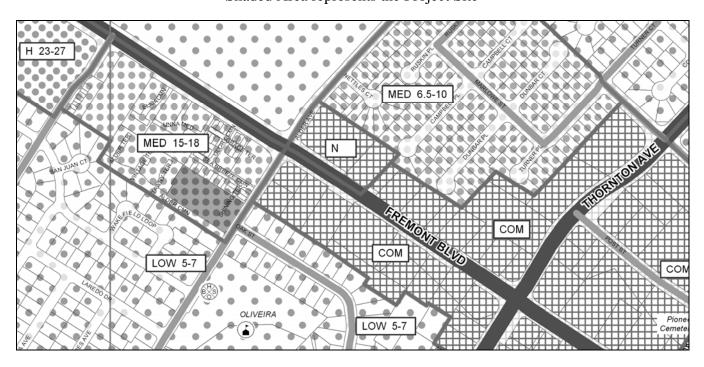


EXHIBIT "B"

Findings and Conditions of Approval For PLN20009-00140, Hearts and Hands Daycare- Conditional Use Permit 4111 Alder Avenue, Fremont, CA 94536

FINDINGS:

The findings below are made on the basis of information presented at the public hearing and contained in the staff report to the Planning Commission dated March 12, 2009, incorporated hereby.

Conditional Use Permit Findings:

- a. The proposed use is consistent with the general plan because "Public and quasi-public buildings and uses of recreational, educational, religious, cultural or public service type" are conditionally permitted uses on properties designated Medium Density Residential on the General Plan land use diagram.
- b. The site is suitable and adequate for the proposed use because, child daycare operations conform to requirements established in the Zoning Ordinance and are subject to conditions of approval contained herein that will ensure that the uses do not have an adverse impact on adjacent or nearby sites.
- c. The proposed use and design would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services because the site has good access from Alder Avenue;
- d. The proposed use would no have a substantial adverse economic effect on nearby uses because the building on the site exists and has been in operation for community related activities for more than eight years.
- e. The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood or the community at large because the child care is properly regulated with adequate parking, would not create nuisances or degrade the environment and is designed to limit impacts on surrounding residents.

CONDITIONS OF APPROVAL:

General Conditions (Must be satisfied on an on-going basis.)

- A-1. Approval of PLN2009-00140 for child daycare center with 35 children shall conform to Exhibit "A" (Site plan, Floor plan and vicinity map), and all conditions of approval set forth herein. This approval is for child care services and does not supersede previous uses and conditions for the site.
- A-2. Minor modifications to the times of operation, as well as the building design/location, and other elements of the Exhibit "A" may be allowed, subject to the approval of the Planning Director, if such modifications are in keeping with the use intent, and layout design of the original approval.
- A-3. The Family Life Center Building shall be used for non-worship educational related activities, including child day care service providing educational based childcare program for children ages 2-5 Monday through Friday.
- A-4. The hours of operation for the child day care center shall generally be limited to 6:30 A.M. to 6:30 P.M., Monday through Friday.
- A-5. The operation of child day care facility shall be in full compliance with and subject to all licensing requirements of the State of California and any applicable Federal law (i.e., the Department of Education licensing and operation requirements).
- A-6. Fencing enclosing the facility and the children's play areas shall be maintained at all times.
- A-7. The parking area shall be kept open during the hours of operation. All parking areas shall be maintained to provide parking for staff (teacher/director and parent volunteers) and parents dropping off their children.
- A-8. The applicant shall provide parents/guardians with a written advisory and diagram that details the protocols for entering, dropping-off, picking up, parking and exiting the site. Parents/guardians shall acknowledge (in writing) that they have read and will abide by the provisions of the advisory.
- A-9. Any signage changes shall comply with the provisions of Fremont Municipal Code Title VIII, Chapter 2, Article 21 Sign Regulations and permits shall be obtained through the Development Services Center.
- A-10. The applicant shall obtain building permits necessary to upgrade the existing facility and site to satisfy all applicable local, state and federal building and fire code requirements prior to rendering child care services.
- A-11. The applicant shall meet all requirements in the currently adopted California Fire Code and local Ordinance Amendments and the Fremont Municipal Code at the time of the permit issuance.

- A-12. Separate permit is required for sprinkler modification and additional fire alarm devices or upgrades.
- A-13. The applicant shall install/modify the monitored fire alarm system. A manual and automatic (smoke detectors) fire alarm system is required throughout the building because of the day care facility. The system must comply with N.F.P.A. 72 and local ordinance #32-2007. A nationally recognized testing laboratory numbered certificate shall be provided at no cost to the City. Fire alarm systems, alarms, supervisory and trouble signals shall be distinctly and descriptively different per City of Fremont Fire Alarm Standard 25A.
- A-14. Construction hours will be limited in accordance with Section 8-2205 of the Fremont Municipal Code, and notes to this effect shall be placed on the cover sheet of the construction plans and on an all-weather notice board (format and content specified by City) conspicuously placed adjacent to the most visible right of way for the duration of the construction activity as follows:
 - a. Monday-Friday, 7 a.m. to 7 p.m.
 - b. Saturday & Holiday, 9 a.m. to 6 p.m.
 - c. Sunday, no construction activity allowed

Before and during Construction Conditions (Conditions that must be satisfied during construction.)

- A-15. This project will generate debris that must be recycled, including scrap metal, wood, and plant debris.
- A-16. The applicant must submit a City of Fremont *Waste Handling Plan* prior to beginning any demolition or construction. The *Waste Handling Plan* must be approved by Environmental Services before permits are issued.
- A-17. The applicant may contract with any recycling company licensed to do business in Fremont for salvage or recycling of separated construction and demolition materials. Separated material destined for recycling may not contain more than 10% by weight of solid waste or other non-recyclable material (FMC IV, Ch 2, 4-2303).
- A-18. Plant and tree debris should not be mixed with other wastes. Plant and tree debris should be chipped on site or taken to a grinding/composting or fuel facility.
- A-19. During construction, the contractor must ensure that trash (non-recyclable construction and demolition debris) is removed from the site per the Fremont Municipal Code, by one or more of the following ways (FMC IV, Ch 2, 4-2300):
 - a. Contacting the City's franchised waste hauler, Allied Waste Services, to arrange for use of debris box containers for all municipal solid waste to be landfilled;
 - b. Removal from the premises by the construction or demolition contractor, using their own equipment and vehicles, as part of a total construction, remodeling or demolition service offered by that contractor.

A-20. Within thirty days of completion of the work, the applicant must file a *Waste Disposal & Diversion Report* documenting actual diversion and disposal of construction and demolition debris, along with receipts or weight tags. Copies of the *Waste Handling Plan* and the *Waste Disposal & Diversion Report* forms are attached in the Waste Handling Guidelines document.

Revocation of Use Permit:

A-21. If the Planning Director finds evidence that conditions of approval have not been fulfilled or that the use or uses has or have resulted in a substantial adverse effect on the health, and/or general welfare of users of adjacent or proximate property, or have a substantial adverse impact on public facilities or services, Planning Director may refer the Conditional Use Permit to the Planning Commission for review. If, upon such review, the Commission finds that any of the results above have occurred, the Commission may modify or revoke the use permit.

END OF CONDITIONS

This page Left page Internally Internal Page Internal Page



PLANNING COMMISSION STAFF REPORT MARCH 12, 2009

Project: ANNUAL REPORT ON THE GENERAL PLAN AND HOUSING

ELEMENT (PLN2009-00165)

Proposal: To consider an annual report on the status of the General Plan and Housing

Element.

Staff Recommendation: Recommend accepting annual report on the General Plan and Housing

Element (this agenda report and Exhibit A) to Council.

Location: Citywide

People: City of Fremont, Applicant

Environmental Review: The annual report is exempt from the California Environmental Quality Act

(CEQA) in that the activity is not defined as a "project" under CEQA

Guideline 15378(b)(5).

EXECUTIVE SUMMARY:

State planning law requires cities to provide a status report on the General Plan to the Governor's Office of Planning and Research (OPR) and an update on the implementation of the Housing Element each year to the State Department of Housing and Community Development. The purpose of this report is to provide an annual review of the General Plan changes as well as progress in implementing the Housing Element in keeping with the requirements of Government Code Section 65400.

BACKGROUND AND PREVIOUS ACTIONS:

The City of Fremont received certification of the current Housing Element in 2003 by the State Department of Housing and Community Development (HCD). In 2005, the City completed rezonings and redesignations of properties at various densities to provide adequate sites for residential development. Annually, the City prepares and submits reports on progress towards meeting housing production and program implementation goals to HCD.

The City of Fremont is actively in the process of updating the General Plan and the Housing Element. Staff anticipates the draft General Plan 2030 will be circulated for review in Summer 2009. Pursuant to State law, the City of Fremont must adopt an updated Housing Element of the City's General Plan by June 30, 2009. Staff has prepared a draft updated Housing Element for submittal to the State Housing and Community Development Department (HCD) for their required review. On March 3, 2009, the City Council *authorized* the submission of the Draft General Plan Housing Element to the State Housing and Community Development for review.

PROJECT DESCRIPTION:

State planning law requires the City to prepare an annual status report on the General Plan. Specifically, Government Code Section 65400 requires the City to provide a report to the legislative body, the Office of Planning and Research, and the Department of Housing and Community Development on or before April 1st of each year on the status of the plan and progress in its implementation, including the progress in meeting its share of regional housing needs and local efforts to remove governmental constraints to the maintenance, improvement, and development of housing.

This report provides an update on the status of the Regional Housing Need goals, the Housing Element and the progress made in meeting the goals and objectives outlined in the Implementation Program for the Housing Element for calendar year 2008, and the General Plan.

PROJECT ANALYSIS:

This report is divided into the following sections:

- I A description of progress in meeting regional housing needs for calendar year 2008.
- II A description of the progress in implementing various programs in the Housing Element.
- III A description of the status of General Plan activities during calendar year 2008.

I. Progress in Meeting Regional Housing Needs

The State of California provides population growth estimates to each regional council of governments, [in the Bay Area, the regional council is the Association of Bay Area Governments (ABAG)] and ABAG is then charged with determining the share of new housing units for which a community must plan in order to accommodate projected housing needs of the estimated growth. The Regional Housing Needs Allocation (RHNA) determination was established by ABAG in 2008 and considers housing production from January 1, 2007 to December 31, 2014. The estimated number of housing units needed in Fremont, as determined and certified by ABAG, is set forth in Table 1 below.

TABLE 1 Housing Need by Income Category (2007-2014)

| Income Category | Housing Need | | | | |
|-----------------------|--------------------------|--|--|--|--|
| Very Low Income | 1,348 households (31.0%) | | | | |
| Low Income | 887 households (20.0%) | | | | |
| Moderate Income | 876 households (20.0%) | | | | |
| Above Moderate Income | 1,269 households (29.0%) | | | | |
| TOTAL | 4,380 households (100%) | | | | |

Source: Association of Bay Area Governments (ABAG) figures.

Generally, Very Low Income households have incomes which do not exceed 50% of the area median income, Low Income households have incomes which do not exceed 80% of area median income, Moderate Income Households have incomes which do not exceed 120% of area median income, and

Above Moderate Income households have incomes greater than 120% of area median income. The median income for the City of Fremont was \$93,420 in 2008. (See Title 25 Cal. Code of Regs. §6910 et seq.)

Table 2 illustrates the City of Fremont's building permit activity for very low-, low-, and moderate-income housing units. (For Table 2, refer to fold out attachment) Building permit activity for calendar year 2008 resulted in the production of 267 housing units total with 44 affordable units at moderate income levels. Two of the affordable units were secondary dwelling units and 42 units were issued permits under the inclusionary housing requirement for the respective developments. 223 housing units were produced as above moderate-income units. Table 3 illustrates the City of Fremont's continued progress with housing production.

TABLE 3
REGIONAL HOUSING NEEDS ALLOCATION PROGRESS

| HOUSEHOLD INCOME LEVEL | REGIONAL HOUSING NEED DETERMINATION | UNITS ISSUED BUILDING PERMIT 1/1/2007 – 12/31/2007 | UNITS ISSUED BUILDING PERMIT 1/1/2008 – 12/31/2008 | TOTAL | UNMET REGIONAL HOUSING NEED DETERMINATION |
|------------------------------|---|--|--|-----------|---|
| Very Low | 1,348 Units | 0 Units | 0 Units | 0 Units | 1,348 Units |
| Low | 887 Units | 0 Units | 0 Units | 0 Units | 887 Units |
| Moderate | 876 Units | 78 Units | 44 Units | 122 Units | 754 Units |
| Above Moderate | 1,269 Units | 322 Units | 223 Units | 545 Units | 724 Units |
| Total | 4,380 Units | 400 Units | 267 Units | 667 Units | 3,713 Units |

Source: ABAG figures and City of Fremont Building Permit records January 1, 2007 to December 31, 2008.

II. Progress in Implementation of the Housing Element (Adopted May 2003, Certified July 2003)

The Housing Element, in Chapter 8, identified a Housing Program Strategy with 5 goals, 12 policies and 47 programs. The enclosed Exhibit A (Status of Housing Element Implementation Programs) lists in detail the various Goals, Policies and Programs, with their current status. Of the 47 implementation programs, 28 are of an on-going nature and 19 have a determinant status. The City has completed all 19 of the implementation programs that have a determinant status.

The time period covered in this report is generally from January to December 2008. A summary of important achievements is provided below organized under the five goals of the Housing Element.

Housing Goal 1: Conservation and Enhancement of Existing Residential Neighborhoods

<u>Housing Policy 1A</u> addresses maintaining existing housing programs which assist very low and low income homeowners and rental property owners in repairing their homes (Programs 1-3.) The current Neighborhood Home Improvement Program addresses this policy and assisted ten homeowners (1 – extremely low, 2-very low, 5-low and 2-moderate income households) with rehabilitation loans funded by Redevelopment Agency affordable housing funds and federal Community Development Block Grant (CDBG) funds during calendar year 2008.

Emergency repair grants were provided to 26 households (22-very low income and 4-low income) during calendar year 2008. The City of Fremont, Office of Housing and Redevelopment sponsored a workshop on January 23, 2008 for property owners and managers on property management, property maintenance, tenant screening, landlord/tenant laws, fair housing laws, mediation services and waste management/recycling. Over the past ten years, more than 1,000 property owners/managers have attended the City-sponsored Apartment Management Certification Program.

<u>Housing Policy 1B</u> addresses non-housing capital improvement needs in Fremont neighborhoods (Program 4-5.) Exhibit A describes the ten projects the Redevelopment Agency contributed to in the last year, for a budgeted amount of \$12.7 million. The next Capital Improvement Program cycle will begin around June 2009 to identify additional projects.

The City also contributed approximately \$8 million to various street and median maintenance and enhancement projects to improve existing residential neighborhoods. All of these capital projects make the areas more attractive and conducive to investment, particularly investments which result in improvements to existing residential neighborhoods.

<u>Housing Policy 1C</u> addresses working with the private sector by assisting private initiatives to maintain and improve neighborhoods and homes (Program 6.) The City is continuing in its work to strengthen neighborhood spirit and unity with the National Night Out program. Council members, commissioners, citizen advisory board members, on-duty police, firefighters, 133 other City staff, and City volunteers participated in the 25th anniversary of National Night Out on August 5, 2008. There were 136 registered block parties. In total over 5,000 Fremont residents participated in National Night Out 2008.

In addition, the City continues to maintain staff liaisons with the Irvington Business Association, the Centerville Business Association, and the Niles Commercial Property Owners Association.

Housing Goal 2: High Quality and Well-Designed New Housing of All Types Throughout the City

This goal addresses the importance of developing and maintaining a high quality, attractive and diverse housing stock throughout the City. Housing Policy 2A states: "The City Shall Continue to Apply Building Codes and Design Standards to Ensure That Development is of High Quality and Consistent with the Scale and Character of the Community" (Program 7-8.) The City of Fremont has adopted the 2007 California building, plumbing, mechanical, electrical and fire codes pursuant to State law in order to prevent unsafe or hazardous building conditions.

In November 2008, a citizens "Green Task Force" made recommendations to the City Council on making the City's operations more sustainable. As a result, the City Council adopted a policy requiring all new residential planned district applications to achieve 50 points on the Build It Green checklist. In addition, as part of the updated Housing Element, the Redevelopment Agency will evaluate establishing an incentive program for developers to install solar photovoltaic systems in multi-family affordable housing projects.

Housing Goal 3: Housing Affordable and Appropriate for a Variety of Fremont Households at all Economic Levels Throughout the City Consistent with the Hill Area Initiative of 2002

Housing Policy 3A relates to the adoption of appropriate land use regulations and other development tools to encourage development of affordable housing. All nine of the implementing programs are now complete. The completion of these nine programs satisfies the requirements of Housing Policy 3A. In addition, as part of Housing Policy 3A under Program 13B, Facilitate and Assist Affordable Housing Developments, there is on-going effort to work with developers to identify sites for affordable housing development and senior housing developments. During this reporting year, the Redevelopment Agency approved a \$2.5 million acquisition fund for a 98-apartment unit senior housing development Eden Housing plans to construct on Peralta Boulevard in the Centerville Redevelopment Project Area. The development proposes 10 units at 16% Area Median Income (AMI), 79 units at 20% AMI, 8 at 35% AMI and 1 caretaker's unit. The Redevelopment Agency also approved a \$219,000 pre-development loan and \$3 million HELP Program acquisition loan for Allied Housing. Allied Housing is proposing 55~60 supportive housing units serving extremely low to low income households in the Irvington Redevelopment Project Area.

In 2004, revisions to mixed-use regulations were implemented through Program 15. The Peralta Mixed Use Senior Homes project, a 98-apartment unit mixed use project in the Centerville Planning Area, received planning approval in the Fall of 2008.

As a result of the implementation program creating the Inclusionary Housing Ordinance (Program 16), a consistent source of affordable units in combination with market rate housing production is ongoing. The following lists specific BMR obligations of recent development projects.

- Robson Homes (Castilleja) with 17 mandatory inclusionary units (15%) has BMR homes available for purchase in 2009.
- John Laing Homes (Ville D'Este) with 55 inclusionary units (5% above the mandatory 15%). Construction has been halted. Twelve of the 55 BMR units have been issued building permits. BMR units will be available for sale commensurate with completion of the project.
- KB Homes (Montebello) with 51 mandatory inclusionary units (15%) is under construction. The BMR homes will be available Fall 2007 through Spring/Summer 2009.
- Summerhill Homes (Rosewood) with 16 mandatory inclusionary units (15%). Construction began Spring 2008.
- Regis Homes (Park Lane West) with 16 mandatory inclusionary units (15%). Construction underway. Eight of the 16 BMR units have been issued building permits. BMR units will be available for sale commensurate with completion of the project.

<u>Housing Policy 3B</u> relates to the General Plan redesignations and rezonings and has eight implementation programs (Programs 17-24). Six of the implementation programs have a determinant status (Program 18-23.)

Program 17, which is an inventory of vacant and underutilized lands, is an ongoing effort. As of 2008, there are approximately 43 parcels of residentially designated land in the City of Fremont with a potential for yielding approximately 2,520 residential units at 30 dwelling units per acre or higher.

Implementation of Program 24, annual report to State Department of Housing and Community Development (HCD), requires the submittal of this report to the HCD by April 1, 2009.

Housing Policy 3C related to encouraging the development of a diverse housing stock that provides a range of housing projects at a range of affordability levels which are equally distributed throughout the City (Program 25-29.) Of the five implementation programs, four will be highlighted. Program 26, which was to eliminate discretionary review in the City's Secondary Dwelling Unit application process, as required by State law, was completed in July of 2003. The City Council approved a comprehensive Zoning Text Amendment relative to second unit standards on March 2, 2004. For this current reporting year, two building permits have been issued for secondary dwelling units.

Progress has also been made with Program 27, which encourages the development of larger sized units for households of low and moderate incomes. The City's Redevelopment Agency adopted an "Affordable Housing Investment Strategy" to encourage the development of those units. A total of 400 three-bedroom units were approved to date as part of this strategy, as detailed in Exhibit A.

Work under Program 28 to provide loans to first time homebuyers accomplished 14 down payment assistance loans to moderate income first time homebuyers. As part of this program, over 500 households were provided with homeownership training in 2008. Under Program 29, Alameda County issued Mortgage Credit Certificates to two low income first time homebuyers.

<u>Housing Policy 3D</u> (Programs 30-34) emphasizes the development and utilization of funding resources to maximize affordable housing development. Program 30 previously evaluated in FY 2004/2005 the feasibility of a program that would require fees from job generating developments to support affordable housing efforts. The program was not chosen for implementation at that time based on economic conditions.

The City continues in its efforts to support affordable housing through the utilization of Redevelopment Agency affordable housing funds, federal HOME funds and Community Development Block Grant (CDBG) Funds, as well as State HELP funds, and tax credits (Program 32).

- Approved a \$2.5 million acquisition funds for a 98-unit senior housing development to be built by Eden Housing in Centerville.
- Approved a \$219,000 pre-development loan and \$3 million HELP Program acquisition loan for Allied Housing's proposed Main Street Village project for 55-60 supportive housing units serving extremely low to low income households.

The purpose of Program 34 is to implement the Redevelopment Agency's Affordable Housing Strategy. This includes the directive that 80 percent of the Agency's financial resources reserved for new housing construction be directed to rental housing developments for extremely low, very low and lower income households. During the 2002-06 time frame, 492 units were approved for development or had existing units provided with affordability restrictions. No additional units were added during the current reporting year.

<u>Housing Policy 3E</u> (Programs 35-37) emphasizes the importance of preserving the existing affordable housing stock. Implementation of Program 35 targets the preservation of affordable housing units at risk of converting to market rate units due to expiration of federal, state or local financing and affordability agreements. During 2007, 27 "at risk" affordable units were not preserved. However, the owners of Regency Square actively assisted 25 BMR residents in relocating to BMR units in other developments and two households remained paying market rate.

As part of Program 36, which assists low income families with move-in costs or other financial assistance, the City provided screening for over 200 households, issued 27 loan guarantees, and provided support counseling to over 150 individuals and followed up on two program loans to ensure participants are making timely payments on their loan guarantee. Under Program 37, the City continues in its efforts to obtain 99 year affordability terms for Inclusionary units within rental projects. This program also includes efforts to obtain 30 -year affordability term for "for-sale" units with renewable 30 year terms upon resale and a 45 year affordability term for households assisted under the First Time Homebuyer Program using RDA funds.

Housing Goal 4: A Continuing Leadership Role in Regional Efforts to Maintain and Expand the Range of Housing Alternatives in the San Francisco Bay Area

Housing Goal 4 (Programs 38 and 39) has one policy and two implementing programs. Implementing Program 38, Support for Non-Profit Affordable Housing Providers, resulted in the issuance of a Proclamation by the Mayor on behalf of the City Council declaring the week of May 5, 2008 as Affordable Housing Week. The City and the Chamber of Commerce sponsored a half-day affordable housing workshop in September, 2008 that included a bus tour of nearby mixed use development. In October 2008, the City sponsored a Housing Workshop to receive community input and give residents an opportunity to learn more about how the City is planning for the housing needs of a growing population and find out how the needs of disabled, senior and family will be met. The workshop also included discussions related to increased density around public transit and design of housing developments. Over 60 residents participated in the workshop.

Under Program 39, Inter-Jurisdictional and Regional Planning, the City continues its participation in the Alameda County HOME Consortium. At least 15% of the funding resources of the consortium are spent in the development or rehabilitation of affordable housing. In addition, The City's Human Relations Commission and Office of Housing and Redevelopment support Affordable Housing Week activities county-wide. The City Council has also adopted the Alameda County Every One Home Plan, a 15-year plan to eliminate homelessness, and in Spring 2008, City Council considered a plan to meet needs of the homeless and those with special needs in Fremont.

Housing Goal 5: Ensure That All Persons Have Equal Access to Housing Opportunities

This goal has two policies and eight implementation programs. Housing Policy 5A's purpose is to enforce regulatory measures to protect individual rights. The two implementation programs (Programs 40 and 41) establish a policy whereby the City will provide rent increase dispute resolution and fair housing counseling services. Between Jan 1, 2008 and Dec 31, 2008, Mediation Services opened 63 conciliation cases of which 50 were successfully conciliated. During the same time frame, ten households had requested mediation services and eight were successfully mediated. The City's provider

of these services, Fremont Fair Housing Services (FFHS), investigated 38 housing discrimination cases and responded to over 581 fair housing inquiries during the reporting period. FFHS provided over 2,600 Fremont residents with landlord and tenant information on their rights and responsibilities and assisted on a number of mediation cases.

The purpose of Housing Policy 5B is to provide assistance to Service Providers of Special Needs Households. It has six implementation programs (Programs 42 to 47). Three programs will be highlighted for discussion. Under Program 42, the Home Equity Conversion Program responded to 28 inquiries and provided 15 seniors with in-depth counseling on home equity. In addition, the Equity Conversion Staff distributed over 1,000+ flyers about the program. Under Program 46 which provides accessibility improvements to existing housing, the City assisted one very-low income and one moderate income households. Under Program 47 which provides for increasing the range of housing opportunities, the City continues to support various housing services and opportunities for homeless households. The accomplishments include financing the operation of a 66-bed emergency shelter facility, providing funds for expanded housing and rental subsidies (such as to victims of domestic violence, youths aged-out of foster care, mentally disabled homeless persons); and, administrative support to partner agencies that provide services to the homeless. In addition, the Housing Scholarship program provides rent reduction to scholarship households while in training and working toward selfsufficiency. There are 22 participants currently in the Program and 348 participants have been assisted since inception in 1987.

In December 2008, a zoning text amendment was completed to allow emergency shelters as a permitted use in at least one zoning district and to allow supportive and transitional housing as residential uses in compliance with State law (Senate Bill 2.)

III. Status of General Plan Activities

This section of the report focuses on General Plan Amendments (GPAs) approved from January 1, 2008 to December 31, 2008. Per Government Code Section 65358(b), the General Plan may not be amended more than four times per year. Each amendment may include more than one change. There were a total of six GPAs approved during this time period occurring on April 22nd, September 23rd, December 2nd and December 9th of 2008. One of the GPAs was City-initiated (i.e., one General Plan text change). The remaining five amendments were initiated by the private sector (i.e., three residential and two commercial/industrial land use redesignations).

There were a total of three General Plan Land Use Amendments related to residential development.

The projects were:

- Beard Road Planned Unit Development (PLN2005-00241) located on Beard Road (approved on April 22, 2008). The land use designation was changed from 0.32 acres of low density residential (3 to 5 du/ac) to low density residential (5 to 7 du/ac) yielding one dwelling unit for the project;
- Thornton Pan-Cal (PLN2008-00305) located on Thornton Avenue (approved September 23, 2008). The land use designation was changed from medium density residential (11 to 15 du/ac) to a total of 1.35 acres at high density residential (27 to 35 du/ac) yielding 15 dwelling units for the project;

• Central Park South (PLN2005-00131) located on Railroad Avenue (approved December 9, 2008). The land use designation was changed from light industrial to a total of 13 acres at medium density residential (11 to 15 du/ac), high density residential (35 to 50 du/ac) and private open space yielding 185 dwelling units for the project.

There were two non-residential General Plan Amendments (two private and one public sector) approved during this time period. The General Motors Auto Dealership Project (PLN2008-00190), a private sector non-residential General Plan Amendment (approved on September 23, 2008) redesignated a 9 acre site located on Boyce Road and Boscell Road from General Industrial with Commercial Industrial Overlay to Commercial High Volume Retail. The amendment was requested to enable the development of two auto dealerships on former truck freighting properties. The second private sector non-residential General Plan Amendment was approved on December 2, 2008 to redesignate 8.7 acres from Light Industrial to Neighborhood Commercial. The amendment was requested to enable the development of a retail center on a vacant industrial site.

City Council approved a City-initiated General Plan text amendment on December 9, 2008 which clarified language in the Land Use Chapter enabling emergency shelter type housing in conformance with established City policy and zoning ordinance (PLN2009-00034).

The City of Fremont is actively engaged in the process of comprehensively updating its General Plan for a planning horizon extending out to 2030. City staff conducted a series of community meetings and workshops in the summer and fall of 2007 to gather community input. This input, together with policy direction provided by the City Council in a series of study sessions in 2008, will serve as a foundation for a draft General Plan. Staff will circulate a draft General Plan in the summer of 2009. The community will again have extensive opportunities for review and comment. Staff anticipates a draft General Plan will be available in the Summer of 2009 and final adoption of the General Plan 2030 in 2010.

PUBLIC NOTICE AND COMMENT:

Public hearing notification is applicable. A total of 249 notices were mailed to organizations and individuals interested in housing issues, and persons entitled to notices, on February 27, 2009. A Public Hearing Notice was delivered to the Tri-City Voice on February 13, 2009 to be published by February 18, 2009.

ENCLOSURES:

Exhibits:

Exhibit "A" A listing of the Housing Element's goals, objectives and implementing measures and a commentary on progress towards achieving them during Calendar Year 2008.

RECOMMENDATION:

- 1. Hold public hearing.
- 2. Recommend the City Council find the Annual Report is exempt from the California Environmental Quality Act (CEQA) in that the activity is not defined as a "project" under Guideline 15378(b)(5).
- 3. Recommend the City Council find that the Annual Report of the General Plan and Housing Element accurately depicts the current status of the City of Fremont with respect to the General Plan and Housing Element.

Jurisdiction **Reporting Period**

<u>City of Fremont</u> <u>January 1, 2008 - December 31, 2008</u>

Table 2 **Annual Building Activity Report** Very Low-, Low-, and Moderate-Income Units and Mixed-Income Multifamily Projects

| Housing Development Information | | | | | | Housing with Financial Assistance and/or Deed Restrictions | | Housing without Financial Assistance or Deed Restrictions | | |
|---|---------------|---------------------------|------------------------------------|------------|---------------------|---|-----------------|--|-------|--|
| 1 | 2 | 3 | 4 | | | 5 | 6 | 7 | 8 | |
| Project Identifier Unit (| Unit Catagon | Tenure / R=Renter O=Owner | Affordability by Household Incomes | | | Total Units per Assistance | Deed Restricted | # of Units Affordable without Financial or Deed Restrictions and Reason Why the | | |
| | Unit Category | | Very Low- Income | Low-Income | Moderate- Income | Above Moderate- Income | Project | Programs for Each Development | Units | Units were Determined Affordable |
| KB Homes (Montebello) | SF | 0 | | | 2 | | 2 | | INC | |
| KB Homes (Montebello) | 5+ | 0 | | | 13 | | 13 | | INC | |
| John Laing Homes (Villa D'Este) | SU | 0 | | | 1 | | 1 | | | secondary unit due to the nature of it's size and configuration is determined to be affordable |
| Regis Homes (Park Lane West) | 5+ | 0 | | | 6 | | 6 | | INC | |
| Robson Homes (Arcadia) | SF | 0 | | | 4 | | 4 | | INC | |
| Robson Homes (Castilleja) | SF | 0 | | | 2 | | 2 | | INC | |
| D St Secondary Dwelling Unit | | | | | 1 | | 1 | | | secondary unit due to the nature of it's size and configuration is determined to be affordable |
| Summerhill Homes (Rosewood) | 5+ | 0 | | | 15 | | 15 | | INC | |
| (9) Total of Above Moderate Units > > > > > | | | | | 223 | 223 | | | | |
| (10) Total by Income Units (Field 5) Table | e 2 > | > > | 0 | 2 | 42 | 223 | 267 | | | |

Legend:

SF - Single Family Residence

5+ - Multifamily Residence w/ 5+ units SU - Secondary Dwelling Unit

INC - Inclusionary Housing Unit

This page Left page Internally Internal Page Internal Page

ACRONYMS

| ABAG Association of Bay Area Governments | HBA Home Builders Association |
|---|--|
| ACCMA Alameda County Congestion | HRCHuman Relations Commission |
| Management Agency | ISInitial Study (CEQA) |
| ACE Altamont Commuter Express | JPAJoint Powers Authority |
| ACFCD Alameda County Flood Control District | Ldn/DNL Day-Night Average Sound Level |
| ACTA Alameda County Transportation | LLMDLighting and Landscaping Maintenance |
| Authority | District |
| ACTIA Alameda County Transportation | LOSLevel of Service |
| Improvement Authority | MNDMitigated Negative Declaration (CEQA) |
| ACWD Alameda County Water District | MMRP Mitigation Monitoring and Reporting |
| BAAQMD Bay Area Air Quality Management | Program (CEQA) |
| District | MTC Metropolitan Transportation Commission |
| BART Bay Area Rapid Transit | NEPA National Environmental Policy Act |
| BCDC Bay Conservation & Development | NDNegative Declaration (CEQA) |
| Commission | NOCNotice of Completion (CEQA) |
| BMPs Best Management Practices | NODNotice of Determination (CEQA) |
| BMR Below Market Rate | NOPNotice of Preparation |
| CBD Central Business District | NPDES National Pollutant Discharge Elimination |
| CC&R's Covenants, Conditions & Restrictions | System |
| CDBG Community Development Block Grant | PCPlanning Commission |
| CDD Community Development Department | PDPlanned District |
| CEQA California Environmental Quality Act | PUCPublic Utilities Commission |
| CIP Capital Improvement Program | PVAW Private Vehicle Accessway |
| CMA Congestion Management Agency | PWCPublic Works Contract |
| COF City of Fremont | RDARedevelopment Agency |
| CUP Conditional Use Permit | RFPRequest for Proposals |
| dB Decibel | RFQRequest for Qualifications |
| DEIR Draft Environmental Impact Report | RHNA Regional Housing Needs Allocation |
| (CEQA) | ROPRegional Occupational Program |
| DO Development Organization | ROWRight of Way |
| DU/AC Dwelling Units Per Acre | RTCResponse to Comments (CEQA) |
| EBRPD East Bay Regional Park District | RWQCB Regional Water Quality Control Board |
| EDAB Economic Development Alliance for | SPAA Site Plan and Architectural Approval |
| Business (County) | STIP State Transportation Improvement |
| EDAC Economic Development Advisory | Program |
| Commission (City) | TCRDF Tri-Cities Recycling and Disposal |
| EIA Environmental Impact Analysis | Facility |
| EIR Environmental Impact Report (CEQA) | T&O Transportation and Operations |
| EIS Environmental Impact Statement (NEPA) | Department |
| FAR Floor Area Ratio | TODTransit Oriented Development |
| FEIR Final Environmental Impact Report | TS/MRF Transfer Station/Materials Recovery |
| (CEQA) | Facility |
| FEMA Federal Emergency Management Agency | UBCUniform Building Code |
| FFD Fremont Fire Department | USD Union Sanitary District |
| FMC Fremont Municipal Code | VTASanta Clara Valley Transportation |
| FPD Fremont Police Department | Authority |
| FUSD Fremont Unified School District | WMA Waste Management Authority |
| GIS Geographic Information System | ZAZoning Administrator |
| GPA General Plan Amendment | ZAPZoning Administrator Permit |
| HARB Historical Architectural Review Board | ZTAZoning Text Amendment |
| III III IIII IIII III III III III III | |

PLEASE DO NOT REMOVE FROM PACKET

2009 PLANNING COMMISSION MEETINGS

| Date | Meeting Type |
|-------|---|
| 1/08 | Planning Commission Meeting |
| 1/15 | Long Range/General Plan Meeting for Planning Commission |
| 1/22 | Planning Commission Meeting |
| 2/12 | Planning Commission Meeting |
| 2/19 | Long Range/General Plan Meeting for Planning Commission |
| 2/26 | Planning Commission Meeting |
| 3/12 | Planning Commission Meeting |
| 3/19 | Long Range/General Plan Meeting for Planning Commission |
| 3/26 | Planning Commission Meeting |
| 4/9 | Planning Commission Meeting |
| 4/16 | Long Range/General Plan Meeting for Planning Commission |
| 4/23 | Planning Commission Meeting |
| 5/14 | Planning Commission Meeting |
| 5/21 | Long Range/General Plan Meeting for Planning Commission |
| 5/28 | Planning Commission Meeting |
| 6/11 | Planning Commission Meeting |
| 6/18 | Long Range/General Plan Meeting for Planning Commission |
| 6/25 | Planning Commission Meeting |
| 7/9 | Planning Commission Meeting |
| 7/16 | Long Range/General Plan Meeting for Planning Commission |
| 7/23 | Planning Commission Meeting |
| 8/27 | Planning Commission Meeting |
| 9/10 | Planning Commission Meeting |
| 9/17 | Long Range/General Plan Meeting for Planning Commission |
| 9/24 | Planning Commission Meeting |
| 10/8 | Planning Commission Meeting |
| 10/15 | Long Range/General Plan Meeting for Planning Commission |
| 10/22 | Planning Commission Meeting |
| 11/12 | Planning Commission Meeting |
| 11/19 | Long Range/General Plan Meeting for Planning Commission |
| 12/10 | Planning Commission Meeting |
| 12/17 | Long Range/General Plan Meeting for Planning Commission |